

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

Senate Bill 862 (Senator Manno)
 Education, Health, and Environmental Affairs

Public Safety - Building Exteriors - Inspection and Maintenance

This bill requires the Department of Housing and Community Development (DHCD) to adopt by regulation a General Property and Structural Maintenance Code for the maintenance and inspection of building exteriors. The bill requires a political subdivision to enforce the code and adopt by regulation a minimum safety inspection standard for the maintenance and inspection of building exteriors. The bill authorizes a political subdivision to charge a fee for an inspection made to enforce the code. A political subdivision may waive the applicability of the code if a property owner submits an application and the waiver would not threaten the health or safety of the public.

Fiscal Summary

State Effect: General fund expenditures increase by \$92,400 in FY 2013 for DHCD to hire a maintenance code consultant and a contractual structural engineer to research and develop the code and address any questions that arise during the adoption process. Once the code is adopted, the need for the contractual position and consultant expires; thus, expenditures are not affected after FY 2015. The criminal penalty provisions of the bill are not anticipated to materially affect State finances.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	92,400	113,700	32,200	0	0
Net Effect	(\$92,400)	(\$113,700)	(\$32,200)	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Some local governments may incur additional costs to conduct inspections of affected buildings once the code is enacted. Local revenues from inspection fees may increase to partially or wholly offset the cost of the additional inspections. The criminal

penalty provisions of the bill are not anticipated to materially affect local government finances. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary: In general, the code must apply to any “affected building.” The code must not apply (1) to residential structures used for human habitation; (2) in any political subdivision that has adopted a minimum safety inspection standard for the maintenance and inspection of building exteriors; or (3) to any affected building exempted by DHCD.

The code must set minimum safety inspection standards for the maintenance and inspection of building exteriors and, if DHCD determines that unique local conditions justify exceptions or variations recommended by political subdivisions, allow for the exceptions and variations between political subdivisions. The code must also include:

- timeframes in which an inspection of an affected building must occur;
- standards for the certification of an affected building as “safe,” “unsafe,” or “safe with a repair and maintenance plan”;
- procedures for the filing of a report by a professional inspector regarding the structural condition of an affected building;
- notification procedures to be used by a professional inspector to inform an owner of the condition of the owner’s affected building; and
- procedures by which the owner of an affected building may appeal the findings of a professional inspector.

The bill requires DHCD to decide questions of interpretation of the code, including questions that relate to uniform enforcement by political subdivisions. DHCD may authorize waivers or exemptions to the code.

A property owner may not willfully violate any provision of the code. A willful violation of the code is a misdemeanor and punishable by imprisonment of up to three months, a fine of up to \$500, or both. Each day that a violation continues is a separate offense. A penalty imposed is in addition to and not a substitute for any other penalty authorized under federal, State, or local law.

“Affected building” is defined as a building that is at least six stories in height or has an item affixed to an exterior building wall that is over 60 feet in height. “Building” is defined as a permanent or temporary structure enclosed with exterior walls and a roof.

“Safe” is defined as the condition of a building exterior that does not require repair or maintenance to sustain the structural integrity of the exterior of the building.

“Safe with a repair and maintenance plan” is defined as the condition of a building exterior that is not considered to be unsafe at the time of inspection but will require repair or maintenance within a timeframe designated by a professional inspector in order to prevent the deterioration of the building into an unsafe condition.

“Unsafe” is defined as the condition of a building exterior that has (1) a dangerous building wall with no means of structural support and that requires immediate remedial action to protect the public health, safety, and welfare; or (2) any condition that was reported as “safe with a repair and maintenance plan” in a previous report and that has not been corrected.

Current Law: There is no statewide maintenance code that applies to commercial buildings. However, 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.

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.

State Expenditures: As noted above, there is no statewide maintenance code that applies to commercial buildings. DHCD advises that, if the bill is enacted, a significant amount of research must be performed to determine whether other jurisdictions have similar codes and to what extent these codes can be applied to buildings in the State. Additionally, DHCD must decide whether to expand the Minimum Livability Code to incorporate the new code or adopt a separate code.

Given the potential complexity of the code and its experience with the development and adoption of both maintenance and building codes, DHCD advises that one contractual staff and one consultant are necessary to fully develop and adopt the code. The Department of Legislative Services concurs.

Accordingly, general fund expenditures increase by \$92,357 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring a structural engineer on a contractual basis to assist DHCD in the development and adoption of regulations, explain and train local jurisdictions in the implementation and enforcement of the code, address questions regarding the interpretation of the code, authorize waivers or exemptions under the new code, and establish penalties for any violations of the code. The estimate also includes costs for a consultant to research similar codes in other jurisdictions, develop the code for the State, and develop reporting and filing procedures for professional inspectors. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$61,509
Consulting Services	22,500
Other Operating Expenses	<u>8,348</u>
Total FY 2013 State Expenditures	\$92,357

Future year expenditures reflect a full salary with annual increases as well as annual increases in ongoing operating expenses. The duties of both the contractual structural engineer and the consultant will be completed by the first quarter of fiscal 2015 once the code is adopted; thus, no fiscal impact is anticipated after fiscal 2015.

Local Fiscal Effect: Local expenditures increase if a political subdivision hires an additional inspector or contracts with a third party to perform additional inspections of affected buildings. Whether a political subdivision needs to hire an inspector or contract with a third party to perform any additional inspections depends on the number of affected buildings in the political subdivision. Some local jurisdictions may also incur additional costs to adopt the code and/or inspection standard.

Kent and Washington counties and the City of Havre de Grace each advise that their jurisdictions have no buildings that meet the definition of an “affected building.” Therefore, for these jurisdictions, any increase in expenditures at this time solely relates to the adoption of the code. Kent County and the City of Havre de Grace estimate expenditures to total \$6,350 and \$700, respectively, in fiscal 2013.

Baltimore City, the City of Frederick, and Worcester County each anticipate the need to hire at least one additional inspector to perform inspections under the bill. Additionally, Baltimore City notes that it could incur additional costs to build a system to receive and file reports, send out notices, and hear and grant appeals and waiver applications. Worcester County and the City of Frederick estimate expenditures to total \$93,350 and \$84,140, respectively, in fiscal 2013. However, Legislative Services advises that the need to hire an inspector may not occur until the new code is adopted.

Local revenues from inspection fees authorized by the bill may increase to partially or wholly offset the cost of the additional inspections.

Small Business Effect: Small businesses subject to inspections incur increases in costs to pay any inspection fees established as a result of the bill. Additionally, small businesses may incur expenses associated with the repair and maintenance of the building in order to sustain a higher level of structural integrity pursuant to the code adopted as a result of the bill.

The bill may also have a positive impact on businesses that are contracted to perform inspections of affected buildings.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; cities of Frederick and Havre de Grace; Baltimore City; Department of Housing and Community Development; Maryland Association of Counties; Department of Legislative Services

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ncs/lgc

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