

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 904 (Senator Ramirez)
Judicial Proceedings

**Residential Leases - Rental Fees - Landlord and Tenant Relations (Maryland
Rental Housing Stabilization Act)**

This bill establishes the Maryland Rental Housing Stabilization Act. The bill creates two independent units in the Executive Branch: (1) the Maryland Rental Housing Authority (MRHA); and (2) the Office of the Tenant Advocate (OTA). The bill also creates the Task Force on the Establishment of Regional Housing Boards.

The bill requires written leases for all residential dwelling units beginning October 1, 2014. The bill restricts the amount of rental fees and capital improvement surcharges a landlord may charge a tenant. The bill prohibits a landlord from evicting a tenant in the absence of just cause, as established in the bill.

The bill takes effect July 1, 2014. The task force provision terminates June 30, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by \$2.7 million in FY 2015 to create and staff the two new State independent units created by the bill, MRHA (\$1.85 million) and OTA (\$0.85 million). General fund expenditures increase by \$50,000 in FY 2015 only for contractual services to support the task force. Any expense reimbursements for task force members are assumed to be minimal and absorbable within existing resources. Any increase in the District Court caseloads can likely be handled with existing resources. General fund revenues increase from registration and processing fees as provided in the bill. The increase in general fund revenues cannot be reliably quantified at this time because essential data on the number of leases in the State and the property value of rental property in the State is not readily available. Potential minimal increase in general fund revenues from criminal and administrative penalties as provided

in the bill. Future year expenditures may be partially offset by revenues. However, the extent of future revenues is indeterminate at this time.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	-	-	-	-	-
GF Expenditure	\$2,749,200	\$3,524,400	\$3,683,400	\$3,849,900	\$4,024,100
Net Effect	(\$2,749,200)	(\$3,524,400)	(\$3,683,400)	(\$3,849,900)	(\$4,024,100)

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

Local Effect: The bill, including its penalty provisions, is not anticipated to materially impact local government operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

The bill defines “residential unit” as an apartment, a townhouse, a house, a mobile home, or a mobile home lot.

Under the bill, “cost basis” is the original cost of property to a landlord, adjusted for factors such as depreciation. “Base rent” is the rental fee in effect for a residential unit existing under the lease agreement. “Rental fee” is the amount charged to a tenant under a lease agreement in connection with the use or occupancy of a residential unit and the provision of housing services. The term includes charges to the tenant for utility services, parking, and the use of communal or recreational facilities.

A “low- or moderate-income tenant” is a tenant whose individual income is less than 120% of the latest available median per capita individual income.

Maryland Rental Housing Authority

The bill establishes MRHA as an independent unit in the Executive Branch of State government. Under the bill, MRHA consists of seven specified full-time paid commissioners appointed by the Governor with the advice and consent of the Senate. Commissioners serve staggered seven-year terms. The Governor may remove a commissioner for incompetence or misconduct.

The bill requires MRHA to:

- accept the registration of residential units offered for rent in the State;
- receive written leases submitted by landlords;
- evaluate a subset of submitted leases at random each year to test their compliance with State law;
- adopt and enforce specified regulations; and
- hear requests from landlords for hardship relief and permission to levy capital improvement surcharges.

Office of the Tenant Advocate

The bill establishes OTA as an independent unit in the Executive Branch of State government. The bill requires the Tenant Advocate to be a licensed Maryland attorney appointed by the Governor, with the advice and consent of the Senate, and devotes full time to duties of the office. The Tenant Advocate serves a seven-year term. The Governor may remove the Tenant Advocate for incompetence or misconduct.

The bill requires OTA to:

- provide tenants with free counsel concerning tenant leases, State and local landlord-tenant laws, and interactions with landlords, the court system, and MRHA;
- advocate for the interests of tenants generally and for the broader public interest in any proceeding before MRHA concerning hardship relief or the approval of a capital improvement surcharge;
- maintain offices and staff sufficient to support its functions; and
- carry out any other functions as assigned by law.

The bill authorizes OTA to intervene in any legal proceeding before a court of the State to represent the interests of tenants generally, in addition to and separate from the interest of any tenant who is a party to the proceeding.

Landlord Registration

By January 1, 2015, a landlord must (1) register with MRHA each residential unit offered for rent in the State by the landlord; (2) submit an original copy, signed and dated, of each written lease executed by the landlord to MRHA no later than 30 days after the lease is executed; and (3) calculate the initial base rent of each residential unit currently offered for rent by the landlord.

The required registration must include specified information related to size, cost basis, rental history, and utility costs, along with any other information that MRHA requires.

The bill requires MRHA to (1) charge a landlord a processing fee for each submitted written lease equal to one month's rent under the submitted lease and (2) require any landlord who offers five or more residential units for rent to pay a registration fee equal to 1% of the total combined value of all the properties on which the units are located. Receipt and recordation of a written lease does not constitute approval of the lease terms by MRHA.

Rental Fees and Capital Improvements

The bill sets forth a maximum initial base rent of a residential unit as the greater of (1) if the residential unit was previously offered for rent, the rental fee in effect for the unit under the most recent lease; (2) 5.9% of the cost basis of the residential unit plus any collateralized debt in the residential unit; or (3) an amount equal to the average monthly cost to the landlord of owning and maintaining the residential unit as specified in the bill. Beginning January 1, 2015, before introducing any new residential unit to the rental market, a landlord must calculate the initial base rent of the residential unit.

The bill prohibits a landlord from increasing the rental fee on a residential unit except as authorized by MRHA. MRHA must adopt regulations authorizing a landlord to increase the rental fee on a residential unit once each year. The authorized increase may not exceed the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) plus 0.5%, provided that the resulting increase is less than or equal to 10% of the base rent. If the rental increase exceeds 10% of base rent, then the increase is capped at the greater of 10% of the base rent or the CPI-W minus 1%.

A landlord may apply to MRHA for permission to levy a capital improvement surcharge. MRHA may only approve a request if it finds that the requested surcharge by the landlord will (1) be used only to cover the actual expense to the landlord of significant capital improvements that materially improve the tenant quality of life and (2) be of limited duration, reasonably designed to amortize the capital improvement costs over a period of time that balances the desire of the landlord to recoup costs in a timely manner with the need to minimize the burden to the tenant. MRHA must hear from the Tenant Advocate before approving a request by a landlord to levy a capital improvement surcharge.

Once approved, a landlord may apply a surcharge to the next scheduled annual increase in the base rent of the unit occurring no sooner than three months after the completion of the capital improvement project covered by the surcharge. A landlord must provide notice to a tenant of any approved surcharge and provide the tenant written documentation of the basis of the surcharge.

If a landlord plans to engage in a large-scale capital improvement project that costs more than 50% of the cost basis of the residential unit affected by the project, then the landlord may apply to MRHA to recalculate the base rent for the unit. After hearing from the Tenant Advocate, MRHA may approve the request only if it has determined that the request is reasonable and will not unduly harm tenants' interests.

The bill authorizes a tenant to petition the District Court if a landlord increases a rental fee beyond the bill's rental fee limitations. If the rental fee and capital improvement surcharge restrictions would cause a landlord undue hardship, the landlord may apply to MRHA for hardship relief. MRHA must hear from the Tenant Advocate before granting any relief to a landlord; in granting relief determined to be appropriate, preference must be given to temporary measures.

The rental fee and capital improvement surcharge restrictions do not apply to federally financed projects where the rent is determined as a percentage of the tenant's income or nonprofit educational institutional housing.

Just Cause Eviction

Under the bill, just cause for eviction exists if:

- a tenant fails to pay rent in a timely manner;
- a tenant commits a substantial breach of the lease terms;
- a tenant refuses a landlord's written request to execute an extension or renewal of an expired lease for the same duration and on substantially similar terms;
- a tenant causes substantial damage to the unit or another area of the property and, upon receiving notice, fails to make a satisfactory correction or pay reasonable repair costs;
- after receiving notice to cease, a tenant continues to engage in disorderly conduct that disturbs the peace and quiet of other tenants;
- a tenant has engaged in illegal activity on the premises or on a public right-of-way abutting the premises;
- a tenant, without reasonable cause, refuses to grant the landlord access to the unit for the purpose of making repairs or improvements or inspecting the unit, or as otherwise authorized under the lease or applicable law;
- a tenant, without reasonable cause, refuses to provide the landlord with information needed by the landlord to satisfy the conditions of an affordable housing financing agreement;
- a landlord, in good faith, seeks to recover possession of the unit for the use of the landlord's spouse, child, parent, or grandparent;

- a landlord, in good faith, seeks to permanently remove the unit from the rental market; or
- a landlord, after having obtained all necessary permits, seeks to undertake substantial repairs or renovations that cannot be completed while the unit is occupied.

Any notice provided by a landlord in a just cause eviction must be sent by certified mail, return receipt requested.

The bill defines “evict” to mean any action to remove a tenant from a residential rental unit and terminate the tenancy against the tenant’s will, including a landlord refusing to renew the lease on substantially similar terms.

Enforcement and Penalties

A landlord that violates any provisions of the bill or a regulation adopted under the bill is guilty of a misdemeanor and on conviction is subject to maximum penalties of a \$1,500 fine, or 11 months imprisonment, or both.

The bill provides an alternative to the above criminal penalties. MRHA may impose an administrative penalty, of up to \$2,000 for each violation on any person who violates the bill or any regulation adopted under the bill. Except as otherwise provided in the Administrative Procedure Act (APA), before MRHA takes any action under the bill, it must give the person against whom the action is contemplated an opportunity for a hearing before MRHA. MRHA must give notice and hold a hearing in accordance with APA. The person against whom the action is contemplated may be represented at the hearing by counsel. The bill authorizes MRHA to issue subpoenas in connection with any investigations or administrative proceedings. If, after due notice, the person against whom the action is contemplated fails or refuses to appear, MRHA may hear and determine the matter.

Task Force on the Establishment of Regional Housing Boards

The task force must:

- study the need for a separate system of regional housing boards to adjudicate disputes between landlords and tenants;
- evaluate the experiences of other states and jurisdictions that have established administrative housing courts or housing boards and identify best practices; and
- if it determines that it would be desirable to establish a separate system of regional housing boards to adjudicate disputes between landlords and tenants, make

specific recommendations regarding (1) the composition of the boards and necessary qualifications of board members; (2) the scope of issues the boards should be authorized to hear; (3) the level of representation due to landlords and tenants in proceedings before the boards; (4) the process for transitioning case loads from the District Court to the boards; (5) the number of boards to be established and their locations; and (6) possible sources of funding for the boards.

The task force must report its findings and recommendations to the Governor and the General Assembly by December 31, 2014.

Current Law: Any landlord who offers five or more dwelling units for rent may not rent a residential dwelling unit without using a written lease.

There is no State rent stabilization law. Generally, a landlord may not bring or threaten to bring action for possession against a tenant, arbitrarily increase the rent or decrease services to which the tenant is entitled, or terminate a periodic tenancy for any of the following reasons:

- the tenant or the tenant's agent has provided to the landlord or any public agency written or actual notice of a good faith complaint against the landlord about an alleged violation of the lease, violation of law, or condition on the leased premises that is a substantial threat to the health or safety of occupants;
- the tenant or agent has filed a lawsuit against the landlord;
- the tenant or agent has testified or participated in a lawsuit involving the landlord; or
- the tenant has participated in any tenants' organization.

A tenant may raise a retaliatory action of a landlord (1) in defense to an action for possession or (2) as an affirmative claim for damages.

If a judgment in any proceeding is for the tenant because the landlord engaged in a retaliatory action, the court may enter judgment for damages not to exceed the equivalent of three-months' rent, reasonable attorney fees, and court costs against the landlord. If the court finds that the tenant's assertion of a retaliatory eviction defense was in bad faith or without substantial justification, the court may enter judgment for damages not to exceed the equivalent of three-months' rent, reasonable attorney fees, and court costs against the tenant. Relief under these provisions is not available if (1) the tenant is not current on the rent due and owing to the landlord at the time of the alleged retaliatory action unless the tenant withholds the rent for specified reasons and (2) a specified number of judgments have been entered against the tenant for failing to pay rent within a specified period, depending on the obligation to pay rent under the tenancy.

When a tenant fails to pay rent, the landlord is entitled to repossession of the premises through filing a written complaint with the District Court. The complaint must (1) describe in general terms the property sought to be repossessed; (2) list the name of each tenant; (3) state the amount of rent and any late fees due and unpaid, less the amount of any specified utility bills, fees, or security deposit paid by a tenant; and (4) request to repossess the premises and, if requested by the landlord, a judgment for the amount of rent due, costs, and any late fees, less the amount of any specified utility bills, fees, or security deposit paid by a tenant. The complaint also may contain other specified information. If the court finds in favor of the landlord, the court must order that possession of the premises be given to the landlord within four days after trial. If the judgment is in favor of the landlord and the tenant fails to pay the past-due rent and late fees within specified timeframes, the landlord may apply for a “warrant of restitution,” which serves as the eviction order. The sheriff’s offices in Baltimore City and the counties are responsible for evictions.

Background: According to the U.S. Census Bureau, 33.5% of housing in the State was renter-occupied in 2012. The median monthly rent was \$1,170. In fiscal 2013, there were 641,940 landlord/tenant cases filed in District Court.

As noted above, there is no current State rent stabilization law. However, this was not always the case. In 1974, Chapter 741 generally prohibited a landlord from increasing a rental fee by more than 5%. Chapter 741 expired July 1, 1975.

Local jurisdictions in Maryland have authority to enact stabilization laws. For example, landlords in Takoma Park may generally only increase rent by a percentage equal to the current year’s increase in the Consumer Price Index-All Urban Consumers (CPI-U) in the Baltimore-Washington metropolitan area. Landlords in College Park are also prohibited from increasing rent by more than the annual percentage increase in CPI-U. However, the Mayor and City Council of College Park have suspended the administration and enforcement of the rent stabilization program. Additionally, while Montgomery County has no statutory prohibition, the county issues an annual voluntary rent guideline, which is the increase in the rental component of the CPI for the previous year for the Baltimore-Washington metropolitan area. The voluntary guideline in 2014 is 1.5%.

In the District of Columbia, a landlord is typically allowed to increase rent each year based on the change in CPI-W. Generally, the maximum amount a landlord can increase rent is the CPI-W percentage plus two percentage points, but not more than 10% higher than the previous rent charged. Landlords of tenants who are elderly or disabled may increase rent by the CPI-W percentage only and never more than 5% higher than the previous rent charged.

State Expenditures: The bill creates two independent units in the Executive Branch: MRHA and OTA. The bill requires MRHA to include seven commissioners and OTA to include a Tenant Advocate. Other positions are required to staff the new units.

Maryland Rental Housing Authority

The Department of Legislative Services (DLS) estimates 20 personnel are required to staff the authority. The estimate is modeled after the Workers' Compensation Commission (WCC) and the Public Service Commission (PSC).

The positions include:

- seven commissioners, compensated in a similar manner to WCC and PSC commissioners;
- three assistants to the commissioners to provide technical expertise on matters before MRHA;
- one program manager to serve as the chief executive officer (CEO) of MRHA similar to the CEO of WCC;
- one personnel director;
- one fiscal director;
- one accountant to support the fiscal director;
- three management associates and three office services clerks to provide clerical support to and to include processing filings in matters before the authority.

General fund expenditures increase by \$1.85 million in fiscal 2015, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring 20 personnel to staff the newly created authority. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate does not include additional costs associated with the development of a landlord registry database.

Positions	20
Salaries and Fringe Benefits	\$1,721,777
Other Operating Expenses	<u>123,940</u>
Total FY 2015 State Expenditures	\$1,845,717

Future year expenditures reflect full salaries with annual increases and employee turnover, the elimination of one-time expenses, and annual increases in ongoing operating expenses.

Office of the Tenant Advocate

DLS estimates 10 personnel are required to staff OTA. The estimate is based on the Office of People’s Counsel.

The positions include:

- one Tenant Advocate with compensation similar to that of the People’s Counsel;
- one administrator to manage personnel and fiscal functions;
- five assistant Tenant Advocates to provide legal counsel to tenants;
- one tenant liaison similar to the consumer liaison at the Office of People’s Counsel; and
- two management associates to provide clerical support to the office.

General fund expenditures increase by \$853,497 in fiscal 2015, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring 10 personnel to staff the newly created office. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	10
Salaries and Fringe Benefits	\$790,667
Other Operating Expenses	<u>62,830</u>
Total FY 2015 State Expenditures	\$853,497

Future year expenditures reflect full salaries with annual increases and employee turnover, the elimination of one-time expenses, and annual increases in ongoing operating expenses.

Task Force on the Establishment of Regional Housing Boards

The task force must report its findings and recommendations by December 31, 2014. However, the bill requires the task force to include the Tenant Advocate and two commissioners of MRHA. The above analysis for MRHA and OTA assumes that the task force is not appointed until October, which leaves little time to meet and develop findings and recommendations in the three-month period from October 1 through December 31. Regardless, general fund expenditures increase by \$50,000 in fiscal 2015 for the Department of Housing and Community Development to pay for contractual services to assist the task force.

Small Business Effect: The bill has a meaningful impact on landlords. Because there is no State rent stabilization law, as long as a rent increase does not constitute a retaliatory

action, a landlord may increase a rental fee by any amount at the end of a lease. If the existing tenant is unable to pay, the landlord can either reduce the new rental fee to keep the tenant or find a new tenant who is willing to pay the increased amount. A ceiling on a rental fee increase could significantly decrease revenues for landlords.

Moreover, the bill's provision requiring written leases regardless of the amount of units may be burdensome for many small landlords who, for example, rent rooms in their private residents. Finally, subjecting landlords to registration and processing fees may also be regarded as detrimental as additional costs will either be absorbed or passed on to tenants in the form of rent increases.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, and Worcester counties; City of College Park; Office of the Attorney General (Consumer Protection Division); Department of Budget and Management; Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Takoma Park Municipal Code; The Harrison Institute for Public Law; Department of Legislative Services

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