

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 301 (Senator Feldman)
Judicial Proceedings

Judgments - Appeals - Supersedeas Bond

This bill specifies that the amount of a supersedeas bond that must be posted in a civil action to stay enforcement of a judgment granting any type of relief during the entire course of all appeals or discretionary reviews may not exceed the lesser of \$100,000,000 or the amount of the judgment for each appellant, regardless of the amount of the judgment appealed.

The bill also contains provisions regarding motions to reduce the amount of a supersedeas bond and procedures when an appellant posts a bond in an amount that is less than the amount that would be required under Maryland Rule 8-423(b).

The bill applies to any civil action filed on or after the bill's October 1, 2015 effective date.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing State resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: In a civil action, a party seeking a stay of execution of a judgment of any amount pending review may file a motion to reduce the amount of a supersedeas bond required to obtain the stay. Upon this motion or on its own motion, a court may reduce the amount of the supersedeas bond or may set other conditions to obtain the stay, with or

without a bond, in the interest of justice or for good cause shown. If an appellant posts a supersedeas bond in accordance with the bill's provisions in an amount that is less than the amount that would be required under Maryland Rule 8-423(b), the appellee may engage in discovery for the limited purpose of determining whether the appellant dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so. The circuit court must retain jurisdiction over the action for the limited purpose of ruling on any motions relating to this discovery to make determinations regarding the dissipation or diversion of assets.

If a court determines that an appellant dissipated or diverted assets outside the course of its ordinary business or is in the process of doing so, the court may (1) enter orders necessary to protect the appellee; (2) require the appellant to post a bond in an amount not to exceed the full amount that would be required under Maryland Rule 8-423(b); and (3) impose other remedies and sanctions that the court considers appropriate.

Current Law: In general, an appellant may stay the enforcement of a civil judgment from which an appeal is taken by filing a supersedeas bond or alternative security with the clerk of the court. The bond or security may be filed at any time before satisfaction of the judgment, but the enforcement is stayed from the time the security is filed. Usually the amount of the supersedeas bond is the sum that will cover the whole amount of the unsatisfied portion of the money judgment, plus interest, costs, and damages entered or awarded on appeal.

Supersedeas bonds are typically filed with and approved by the clerk of the court and must contain a surety, unless otherwise expressly provided. If a clerk refuses to approve a bond, or an adverse party objects in writing to the bond, the court may approve the bond after notice and a hearing, if necessary. Under Rule 1-402(d), a court may require an increase or decrease in the face amount of a bond for good cause shown. This rule reserves to the trial court the discretion to increase or decrease the face amount of the bond in an extraordinary case. *O'Donnell v. McGann*, 310 Md. 342 (1987).

Under Maryland Rule 8-423(b), the amount of a bond for a judgment of money not otherwise secured must be the amount that will cover the whole amount of the unsatisfied portion of the money judgment, plus interest and costs. However, the court may reduce the amount of the bond after making specific findings justifying the amount following consideration of all relevant factors. When the judgment determines the disposition of the property in controversy or when the property, or the proceeds of its sale, is in the custody of the lower court or the sheriff, the amount of the bond must be the sum that will secure the amount recovered for the use and detention of the property, interest, costs, and damages for delay. In any other case, the amount of the bond must be fixed by the lower court.

Despite these parameters, the parties in a case may agree to an alternative amount for the bond.

Background: The filing of an appeal does not, in and of itself, stay the execution of a judgment in a civil case. To stay execution of a judgment pending appeal, courts often require the filing of a supersedeas bonds – bonds to secure a judgment (*i.e.*, supersede the judgment) of money or property pending appeal. The filing of a supersedeas bond to stay the execution of a judgment pending appeal has historically been considered a feature of common law. Debate continues in the legal community as to the wisdom of continuing the requirement of filing a supersedeas bond as more lenders leave the market and the availability of these bonds decreases.

Additional Information

Prior Introductions: None.

Cross File: HB 164 (Delegate Dumais) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2015
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