

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 31
 Judiciary

(Delegate Clippinger)

Judicial Proceedings

Courts - Surcharges and Payment to Special Funds - Prohibited Lease Provisions

This bill increases a surcharge that is applied to specified civil filings in the circuit courts and the District Court. Specifically, the maximum authorized surcharge for civil cases filed in the circuit courts increases from \$55 to \$85; in the District Court, the maximum authorized surcharge increases from \$8 to \$68 for summary ejectment cases, and from \$18 to \$28 for all other civil cases. The bill requires the surcharges to be deposited, as specified, into (1) the Maryland Legal Services Corporation (MLSC) Fund; (2) the Right to Counsel in Evictions Special Fund; and (3) the Rental Assistance Special Fund, which is established under the bill. The bill also prohibits a court or landlord from passing on the first three surcharges assessed in a year for a summary ejectment case to a tenant.

Fiscal Summary

State Effect: Special fund revenues increase by \$34.0 million in FY 2022. Future years reflect annualization. Special fund expenditures increase, as discussed below. General fund expenditures increase by \$22,500 in FY 2022 only for one-time programming costs.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	\$33,957,300	\$45,276,500	\$45,276,500	\$45,276,500	\$45,276,500
GF Expenditure	\$22,500	\$0	\$0	\$0	\$0
SF Expenditure	\$15,434,100	\$20,578,800	\$20,578,800	\$20,578,800	\$20,578,800
Net Effect	\$18,500,700	\$24,697,700	\$24,697,700	\$24,697,700	\$24,697,700

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

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Surcharges Relating to Circuit Court Filings

The maximum authorized surcharge for civil cases filed in the circuit courts increases from \$55 to \$85. The bill does not alter the requirement under current law that these surcharges are to be deposited into the MLSC Fund.

Surcharges Relating to District Court Filings

The maximum authorized surcharge for summary ejectment (failure to pay rent) cases increases from \$8 to \$68. The bill requires the surcharges to be deposited as follows: (1) \$30 into the Rental Assistance Special Fund (a new special fund established by the bill, as discussed in more detail below); (2) \$30 into the Right to Counsel in Evictions Special Fund; and (3) \$8 into the MLSC Fund. These surcharges must be assessed against a landlord and may not be awarded or assigned by the District Court as a fee or cost against a residential tenant for the first three surcharges assessed in a year.

The maximum authorized surcharge for all other civil cases filed in the District Court increases from \$18 to \$28. The bill does not alter the requirement under current law that these surcharges are to be deposited into the MLSC Fund.

Landlord/Tenant Leases

A landlord may not use a lease or form of lease containing any provision that provides that a tenant is, or requires a tenant to agree to be, responsible for the first three payments of a filing surcharge assessed in a year against the landlord by the District Court, pursuant to the bill.

Rental Assistance Special Fund

The bill establishes the Rental Assistance Special Fund as a special, nonlapsing fund administered by the Department of Housing and Community Development (DHCD). The stated purpose of the fund is to provide funding to nonprofit organizations that work in the area of rent assistance to pay the back rent for individuals facing a potential residential rental property eviction.

The fund consists of (1) money appropriated in the State budget to the fund; (2) any other money from any other source accepted for the benefit of the fund; and (3) interest earnings of the fund. The bill specifies that the fund may only be used for rental assistance and

paying back rent for individuals facing a potential residential rental property eviction. Money expended from the fund for rental assistance is supplemental to and is not intended to take the place of funding that otherwise would be appropriated for the assistance.

Current Law:

Surcharges Relating to Specified Court Filings and the MLSC Fund

Money from the existing surcharges under the statutory provisions affected by the bill is deposited into the MLSC Fund, which is used to finance civil legal services to indigent clients.

Court costs and charges for the circuit courts are set by the State Court Administrator with the approval of the Board of Public Works. The initial filing fee for a civil case in the circuit courts is generally \$165, including any applicable surcharges. In addition to the \$55 surcharge for MLSC, a surcharge of up to \$30 is assessed on initial civil filings (\$6 on reopened cases) for the Circuit Court Real Property Records Improvement Fund.

In addition to applicable filing fees, the Chief Judge of the District Court must assess a surcharge of up to \$8 for summary ejectment (failure to pay rent) cases and \$18 for all other civil cases. In the District Court, additional surcharges of up to \$3 for summary ejectment cases and \$8 for all other civil cases are also assessed for the benefit of the Circuit Court Real Property Records Improvement Fund. In Baltimore City, further surcharges are applied to certain landlord/tenant cases; these funds are remitted to the city to enhance the service of domestic violence orders.

A judge may waive the prepayment of filing fees and other costs due to indigence.

In addition to funding from the surcharges on civil cases, the MLSC Fund receives a required distribution of \$2.0 million annually from the State's Unclaimed Property Fund. Attorneys are also required to place small or short-term client trust funds into an Interest on Lawyer Trust Accounts account, the interest on which is paid into the MLSC Fund.

Summary Ejectment Filings

Whenever a landlord desires to repossess a premise to which the landlord is entitled due to a tenant's failure to pay rent, the landlord (or the landlord's duly qualified agent or attorney) must file a written complaint in the District Court of the county where the property is situated. The landlord must provide specified information in the complaint about the property, tenant, and unpaid rent. In addition, the landlord may request a judgment for the amount of rent due, costs (including filing costs), and any late fees, less the amount of any

utility bills, fees, or security deposits paid by a tenant under § 7-309 of the Public Utilities Article.

State Fiscal Effect: According to the Administrative Office of the Courts, in fiscal 2019, circuit court civil cases generated approximately \$4.1 million in surcharges for the MLSC Fund, summary ejectment cases generated approximately \$5.5 million in surcharges for the MLSC Fund, and other District Court civil cases generated approximately \$3.4 million in surcharges for the MLSC Fund (*i.e.*, approximately \$13.0 million total from the affected surcharges). Under the bill, circuit court civil surcharges increase from \$55 to \$85, District Court summary ejectment surcharges increase from \$8 to \$68, and other District Court civil surcharges increase from \$18 to \$28. *If* case filings remain constant, *total* special fund revenues (for all special funds affected by the bill) increase by *as much as* \$45.3 million annually (reflecting increases of approximately \$2.2 million in circuit court civil surcharges, approximately \$41.2 million in summary ejectment surcharges, and approximately \$1.9 million in District Court civil surcharges). In fiscal 2022, total revenues increase by approximately \$34.0 million, which reflects the bill's October 1, 2021 effective date.

Of the \$45.3 million, special fund revenues for the MLSC Fund increase by as much as \$4.1 million annually (\$3.1 million in fiscal 2022); special fund revenues for the Rental Assistance Special Fund and the Right to Counsel in Evictions Special Fund are each anticipated at *up to* \$20.6 million annually (\$15.4 million in fiscal 2022).

This estimate is based on surcharge revenues collected in fiscal 2019. While the number of case filings varies each year, this estimate assumes that the number of cases to which the surcharges are imposed remains constant and that the maximum surcharge is imposed. The Department of Legislative Services (DLS) notes, however, that the significant increase in the summary ejectment surcharge coupled with the bill's provision restricting courts or landlords from passing the surcharge on to the tenant may deter landlords from filing as many failure to pay rent cases, or waiting longer periods before filing. Any such impact has not been accounted for in this analysis, but *may* materially affect overall filings. Accordingly, the special fund revenues illustrated in this fiscal note indicate the *maximum* revenues anticipated. To the extent that case filings for summary ejectment cases decrease, DLS notes that general fund revenues also decrease (representing a decrease in revenue from the \$4 filing fee per case that is attributed to the general fund); special fund revenues for the Circuit Court Real Property Records Improvement Fund likewise decrease.

While the bill does not require additional spending for the MLSC Fund, the fund is used to finance civil legal services to indigent clients. Accordingly, the bill results in additional funding available for this purposes.

As noted above, special fund revenues for the newly established Rental Assistance Special Fund are anticipated at up to \$15.4 million in fiscal 2022 and \$20.6 million annually thereafter. Special fund expenditures are assumed to increase correspondingly as the fund is used for the purposes as authorized under the bill. DHCD advises that it can establish and administer the Rental Assistance Special Fund with existing resources.

DLS notes that although the bill requires a portion of the surcharge revenues to be directed to the Right to Counsel in Evictions Special Fund, that fund, which has been proposed in separate legislation (House Bill 18), does not yet exist as an operational fund. Furthermore, the bill does not include contingency language or otherwise specify how the relevant surcharge revenues are to be directed in the event the special fund does not, in fact, become operational. While this fiscal and policy note does assume that the surcharge is imposed (and therefore reflects these increased revenues), it does not reflect any expenditures associated with the Right to Counsel in Evictions Special Fund.

Additionally, the Judiciary advises that it incurs approximately \$22,521 in programming costs in fiscal 2022.

Small Business Effect: Landlords and management companies filing summary ejectment cases can no longer pass on as many imposed surcharges, which are significantly increased by the bill, to tenants. Other small businesses filing civil cases in either the District Court or the circuit courts pay increased filing costs. Small businesses managing rental housing may benefit from increased funding for rental assistance programs.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Department of Human Services; Department of Legislative Services

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Analysis by: Tyler Allard

Direct Inquiries to:
(410) 946-5510
(301) 970-5510