

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 18

(Delegate W. Fisher, *et al.*)

Judiciary

Judicial Proceedings and Budget and Taxation

---

**Landlord and Tenant - Residential Tenants - Right to Counsel**

---

This bill establishes a right to legal representation for individuals meeting specified qualifications (“covered individuals”) in specified landlord-tenant proceedings. To facilitate this right, the bill establishes the Right to Counsel in Evictions Program, administered by the Maryland Legal Services Corporation (MLSC), to organize and direct services and resources in order to provide all covered individuals with access to legal representation. The bill also establishes (1) a Right to Counsel in Evictions Task Force and (2) a Right to Counsel in Evictions Special Fund, which is a special fund to be administered by MLSC for the purpose of providing funding to fully implement a civil right to legal representation in evictions and other related proceedings in the State. The right to legal representation established by the bill must be phased in over time as determined appropriate by MLSC and be fully implemented before October 1, 2025.

---

**Fiscal Summary**

**State Effect:** General fund expenditures increase *significantly* beginning in FY 2022 to capitalize the fund and implement the right to legal representation in specified proceedings. Special fund revenues and expenditures increase correspondingly. Indeterminate impact on general fund revenues and special fund revenues associated with filing fees, as discussed below. **This bill establishes an entitlement program beginning in FY 2022.**

**Local Effect:** The bill is not anticipated to directly affect local government operations or finances, as discussed below.

**Small Business Effect:** Minimal.

---

## Analysis

### Bill Summary:

#### *Selected Definitions*

“Community group” means a nonprofit entity with the capacity to conduct tenant outreach and provide engagement, education, and information.

“Covered individual” means an individual who (1) occupies a residential property under a claim of legal right other than the owner, including a tenant in a building owned, operated, or managed by a public housing authority and (2) is a member of a household with an income that is not greater than 50% of the State median income, as specified.

“Legal representation” includes all representation by an attorney beyond brief legal advice and is not limited to the formal entry of appearance in court.

#### *The Right to Counsel in Evictions Proceedings*

The bill establishes a Right to Counsel in Evictions Program administered by MLSC to organize and direct services and resources in order to provide all covered individuals in the State with access to legal representation.

Under the program, MLSC must provide a covered individual with access to legal representation for a judicial or administrative proceeding in (1) actions to evict a covered individual and (2) violations of other specified landlord-tenant matters (retaliatory actions by a landlord, rent escrow, failure of a lessor to remove lead paint, nonjudicial evictions by willfully interrupting specified services for the purpose of forcing the tenant to abandon the property, and local equivalents of these actions). Legal representation may extend to the first appeal in proceedings if MLSC determines there are sufficient legal grounds for appeals on the specified causes of action.

MLSC must ensure that a covered individual receives access to legal representation in a covered proceeding as soon as possible after (1) the initiation of an eviction proceeding or (2) the determination by MLSC that a proceeding on behalf of a covered individual should be initiated. If feasible, legal representation should begin no later than the individual’s first scheduled appearance in the proceeding.

MLSC must provide a covered individual with legal representation unless (1) circumstances specific to the individual or case prohibit legal representation by MLSC under the Maryland Rules of Professional Conduct or (2) the MLSC lacks the capacity at the time to legally represent the covered individual.

The program of legal representation must be phased in – as determined appropriate by MLSC – but must be fully implemented by October 1, 2025. Priority in funding during the phase-in period will be given to tenants in a local jurisdiction that provides or agrees to provide significant additional local funding to effectuate a right to counsel in the local jurisdiction.

#### *Public Outreach and Reporting Requirements*

MLSC must develop an informational pamphlet in English and Spanish describing the legal rights of tenants, including the right to counsel established under the bill, and provide information on resources available to tenants. A sheriff or constable must provide a copy of the pamphlet when serving process in accordance with specified eviction-related proceedings.

MLSC must designate and contract with appropriate community groups to conduct relevant public outreach and education, to tenants locally and throughout the State, regarding tenants' rights, including the right to legal representation provided in the bill.

Annually by August 31, MLSC must report to the Governor and the General Assembly on (1) the number of covered individuals provided legal representation during the previous calendar year; (2) information on and metrics evaluating case outcomes; and (3) a summary of the engagement and education of tenants.

#### *Right to Counsel in Evictions Task Force*

The bill establishes a Right to Counsel in Evictions Task Force. The task force consists of up to 15 members appointed by the Office of the Attorney General (OAG). The Attorney General must designate the chair of the task force. OAG must staff the task force. The task force must (1) evaluate the provision of services provided under the bill; (2) study potential funding sources; and (3) make recommendations to improve implementation of the provisions in the bill, including necessary policy and statutory changes. A member of the task force may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget. The task force may apply for grants from public and private entities to carry out its duties.

By January 1, 2022, and annually thereafter, the task force must submit an annual report of its findings and recommendations to the Governor and the General Assembly.

#### *Right to Counsel in Evictions Special Fund*

The Right to Counsel in Evictions Special Fund established by the bill is a special, nonlapsing fund that is only to be used for (1) services provided by MLSC to implement

the right to counsel program, as specified in the bill and (2) expenses related to the study and evaluation of services, activities, funding amounts, and sources necessary to fully implement the program as provided under the bill.

### *Local Jurisdictions*

Local jurisdictions may enact local laws providing for legal representation in eviction proceedings. If a local jurisdiction enacts a substantially similar program, MLSC must direct funding that would have been allocated under the bill's provisions for the benefit of that jurisdiction's tenants to the local program.

### *Miscellaneous Provisions*

Under the bill, MLSC is required to adopt regulations to carry out the established provisions. The bill also contains a severability provision.

**Current Law:** Tenants are not entitled to legal representation in landlord-tenant proceedings. In general, a landlord seeking to evict a tenant initiates the process by filing the appropriate action (*e.g.*, failure to pay rent, breach of lease, etc.) in the District Court. If awarded a judgment by the court, the landlord files a warrant of restitution, which, once reviewed and signed by the court, authorizes an eviction. The warrants of restitution are forwarded to the local sheriff's office, who is then authorized to carry out the evictions. Statute sets forth numerous specific requirements for such actions, including those related to written notice prior to filing certain actions, and, in failure to pay rent cases, a four-day waiting period between receiving a judgment of possession and filing a writ of restitution.

MLSC, as established in Title 11 of the Human Services Article, has the purpose of receiving and distributing funds to "grantees" that provide legal assistance to eligible clients in civil proceedings or matters. A grantee means a nonprofit organization that is (1) qualified under § 501(c)(3) of the Internal Revenue Code; (2) provides legal assistance to eligible clients; and (3) receives financial assistance, as specified, from MLSC.

**State Fiscal Effect:** General fund expenditures increase *significantly* to capitalize the fund and implement the legal representation guaranteed by the bill. Special fund revenues to and expenditures from the fund increase correspondingly.

Because the right to counsel is to be phased in over four years, it is not possible to reliably predict expenditures for specific fiscal years, as the impact will depend on decisions made by MLSC. Furthermore, the Department of Legislative Services (DLS) notes that the fund created by the bill is also specifically authorized to be used for expenses related to *the study of funding amounts* and sources necessary to fully effectuate a right to counsel in eviction proceedings. Nevertheless, DLS advises that costs associated with the full implementation

of this right are significant, particularly considering the large volume of landlord-tenant matters filed annually (more than 650,000 cases).

### *Representation Costs*

Although a reliable estimate of expenditures is not available, information provided by local jurisdictions is helpful to illuminate the magnitude of expenditures related to such a right to counsel. For example, Anne Arundel County advises that it has used a portion of funding received from the Coronavirus Aid, Relief, and Economic Security Act, to assist individuals with legal representation for eviction proceedings. Anne Arundel County has provided legal assistance to 200 clients over the past six months and anticipates annual expenditures of up to \$175,000 if a similar number of clients is served during the next six months. Frederick County advises that *total* costs associated with implementing a local program to serve approximately 5,500 individuals annually would exceed \$1.8 million annually (accounting for State and local funding). An independent report analyzing the potential costs associated with fully implementing a similar program in Baltimore City estimated expenditures of \$5.7 million annually, based on an *additional* 6,900 tenants receiving free representation each year (the analysis also assumed that existing funding sources already providing assistance to some individuals would continue).

### *Administrative and Other Costs*

In addition to the significant funding referenced above, the bill likely necessitates additional MLSC staff for the administration of the fund. The bill's restrictive funding provisions do not *explicitly* state that the special fund established by the bill may be used for administrative costs associated with the program, but allow for services provided by MLSC to *implement* the program as an authorized use. MLSC anticipates the need for at least one attorney and one administrative staff to oversee the program and, therefore, estimates initial implementation costs of at least \$250,000, which also includes staffing costs and expenses related to the study and evaluation required in the bill. Ongoing salary costs are estimated to be *at least* \$140,000, exclusive of fringe benefits. MLSC employees are not State employees. If these ongoing administrative costs are not allowed to be covered by the newly established special fund, it is assumed that other funding available to MLSC is used instead, thus reducing funding that would otherwise be available for other purposes (such as providing grants related to existing programs). Costs are likely also incurred to develop and print the pamphlets, which must be made available for distribution. Accordingly, special fund expenditures increase further (along with general fund expenditures and special fund revenues).

### *Related Impacts on the Judiciary*

The Judiciary advises that, given the large number of cases affected by the bill, the bill has an operational and potential fiscal impact. Generally, the District Court plans dockets with the assumption that a large number of cases will result in default judgment or dismissal. If more tenants (accompanied by counsel) instead appear, more clerical time and judicial attention is required. However, the bill may also lead to fewer filings as landlords may alter filing habits (*e.g.*, postpone filing until more rent is due) if they are aware that the opposing party will have representation. Any impact on the number of cases filed has a corresponding impact on general fund filing fee revenues collected by the Judiciary (as well as to special fund revenues from surcharges imposed on filing fees).

### *Other Provisions*

Special fund revenues increase minimally from investment earnings of the new fund. It is also assumed that OAG can staff the task force using existing resources.

**Local Fiscal Effect:** As noted above, pursuant to MLSC’s existing statutory authority (which is unchanged by this bill), its purpose is to receive and distribute funds to specified “grantees,” which are nonprofit organizations. Although the bill includes requirements for MLSC to direct funding that would have been allocated for the benefit of a local jurisdiction’s tenants to a local program, if a local program is enacted, it is assumed that local jurisdictions that elect to establish a program similar to the program under the bill will not *directly* be provided funding from MLSC. Instead, it is assumed that eligible nonprofit entities within these jurisdictions receive funding from MLSC for services rendered in landlord-tenant disputes for the benefit of the local jurisdiction’s tenants.

**Additional Comments:** MLSC advises that, pursuant to its statutory authority in § 11-201 of the Human Services Article, its purpose is to receive and distribute funds to “grantees” that provide legal assistance to eligible clients in civil proceedings or matters. Although it funds legal services programs, it does not provide referrals to such programs or provide *any* direct client services. While it is, therefore, generally assumed that MLSC meets its responsibilities under certain provisions in the bill to “provide a covered individual with legal representation” by providing eligible grantees with funding to effectuate this purpose, it is unclear how other provisions, such as those referring to MLSC making determinations that there are sufficient legal grounds for an appeal, operate in light of MLSC’s current statutory authority.

DLS also notes that a funding source for the Right to Counsel in Evictions Special Fund has been proposed in separate legislation (House Bill 31). Specifically, that legislation would assess a surcharge of up to \$120 in summary ejectment cases; of that surcharge, \$30 would be deposited into the Right to Counsel in Evictions Special Fund. Assuming that the

maximum surcharge is assessed, up to \$15.4 million in fiscal 2022 (which reflects the October 1, 2021 effective date) and \$20.6 million annually would be available for the fund. To the extent this funding is available, the general fund impact is mitigated.

However, that estimate is based on surcharge revenues collected in fiscal 2019. While the number of case filings varies each year, the estimate assumes that the number of cases to which the surcharges are imposed remains constant and that the maximum surcharge is imposed. DLS notes, however, that the significant increase in the summary ejection surcharge coupled with that 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 was not been accounted for in the relevant analysis, but may materially affect overall filings. Accordingly, the potential special fund revenues illustrated above indicate the *maximum* revenues anticipated to be available, should House Bill 31 be enacted.

Finally, DLS also notes that although House Bill 31 directs funding to the Right to Counsel in Evictions Special Fund, it does not include separate provisions to establish the fund nor is House Bill 31 contingent on the passage of this bill.

---

### Additional Information

**Prior Introductions:** None.

**Designated Cross File:** SB 154 (Senator Hettleman, *et al.*) - Judicial Proceedings and Budget and Taxation.

**Information Source(s):** Anne Arundel, Charles, Frederick, and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; Maryland Legal Services Corporation; Department of Legislative Services

**Fiscal Note History:** First Reader - January 28, 2021  
rh/jkb Third Reader - April 5, 2021  
Revised - Amendment(s) - April 5, 2021

---

Analysis by: Donovan A. Ham

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