

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 361 (Delegate Henson, *et al.*)  
 Environment and Transportation

Mold Inspections and Remediation - Standards, Reporting, Penalties, and Tax Credit

This bill requires the Maryland Department of the Environment (MDE), in consultation with the Maryland Department of Health (MDH), the Department of Housing and Community Development (DHCD), and the Department of General Services (DGS), to adopt regulations that establish uniform standards for mold assessment and remediation, as specified, by June 1, 2024. The bill also establishes provisions relating to (1) enforcement and penalties; (2) rent escrow rights and protections for specified tenants; and (3) a nonrefundable credit against the State income tax for certain mold remediation expenses incurred by the owner of a residential rental property. **The bill takes effect July 1, 2022; the tax credit provisions terminate June 30, 2032.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$1.0 million in FY 2023; future years reflect annualization, inflation, and elimination of one-time costs. General fund revenues likely decrease by \$600,000 annually in FY 2023 through 2032 due to credits claimed against the income tax.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
GF Revenue	(\$600,000)	(\$600,000)	(\$600,000)	(\$600,000)	(\$600,000)
GF Expenditure	\$1,021,000	\$657,700	\$676,100	\$693,500	\$712,000
Net Effect	(\$1,621,000)	(\$1,257,700)	(\$1,276,100)	(\$1,293,500)	(\$1,312,000)

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

**Local Effect:** Local expenditures increase, likely significantly in some jurisdictions, beginning as early as FY 2025 to conduct the required inspections; it is assumed that some inspection costs are recouped. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

## Analysis

### Bill Summary:

#### *Relevant Definitions*

“Mold” means a form of multicellular fungi that lives (1) on a plant or animal matter or (2) in an indoor environment. A “mold hazard” is an adverse human health effect associated with mold exposure, including allergic reactions, asthma, and other respiratory complaints. “Mold assessment” means (1) an inspection, an investigation, or a survey of a dwelling or other structure to provide information to the owner regarding the presence, identification, or evaluation of mold; (2) the development of a mold management plan; or (3) the collection or analysis of a mold sample. “Mold remediation” means (1) removing, cleaning, sanitizing, demolishing, or any other treatment performed to address a mold hazard, mold, or dampness or (2) abatement of the underlying cause of a mold hazard, mold, or dampness.

A “rental dwelling unit” is a room or group of rooms that form a single independent habitable rental unit for permanent occupation by one or more individuals that has living facilities equipped with permanent provisions for living, sleeping, eating, cooking, and sanitation. A rental dwelling unit does not include (1) an area not used for living, sleeping, eating, cooking, or sanitation, such as an unfinished basement; (2) a unit within a hotel, motel, or other similar seasonal or transient facility; (3) an area that is secured and inaccessible to occupants; or (4) a unit not offered for rent.

#### *Mold Assessment and Remediation*

The regulations adopted pursuant to the bill must:

- establish standards for (1) identifying and evaluating the presence of mold, including visible mold inspection and testing; (2) mold air sample analyses in accordance with the standards of specified entities, (3) bulk or surface mold sample analyses conducted in accordance with the standards of specified entities; (4) visible mold inspections, as specified; and (5) mold remediation standards in accordance with specified guidelines issued by the U.S. Environmental Protection Agency (EPA);
- establish a risk reduction standard for mold hazards;
- require a local jurisdiction to (1) conduct visual inspections to identify potential mold in rental dwelling units within the jurisdiction as often as necessary to comply with the minimum livability code established under the Public Safety Article and

local building and maintenance code standards and (2) notify landlords of landlord's responsibility to have mold assessments conducted, as specified;

- authorize the mold inspection to be performed in conjunction with another inspection;
- require the landlord of a rental dwelling unit to (1) pay for the required mold inspection; (2) be responsible for having a mold assessment conducted to analyze potential mold identified in a mold inspection; (3) remediate mold identified during an assessment; and (4) disclose the results of the mold inspection to a current or prospective tenant;
- require a current or prospective tenant to notify the landlord immediately upon detecting the presence of mold; and
- prohibit a current or prospective tenant from waiving the disclosure requirement.

The bill specifies individuals that a local jurisdiction may authorize to perform mold assessments and inspections. MDE must develop and make resource materials regarding mold hazards and mold available both in print and on its website.

#### *Enforcement and Penalties*

A person who violates the regulations adopted pursuant to the bill is subject to a civil penalty of up to \$250 per violation, not exceeding \$10,000. Each day a violation continues constitutes a separate offense. The bill establishes factors that must be considered when assessing the civil penalty.

A local jurisdiction, county attorney, or municipal attorney may enforce the bill's provisions regarding mold assessment and remediation.

#### *Rent Escrow*

If a landlord fails to comply with the regulations adopted under the bill or the bill's disclosure requirements, the tenant may deposit the tenant's rent in an escrow account with the clerk of the District Court, as specified. Prior to depositing rent in escrow, the tenant must provide notice of mold or a mold hazard to the landlord in a reasonable manner. The right of a tenant to deposit rent in an escrow account does not preclude the tenant from pursuing any other right or remedy available to the tenant at law or equity.

The bill establishes terms and conditions under which money deposited in an escrow account pursuant to the bill must be released. A lessee may not be evicted, the tenancy may not be terminated, and the rent may not be raised for a lessee who elects to seek remedies through use of an escrow account under the bill. Further, the bill establishes a presumption that any attempt to evict the tenant, to terminate the tenancy, or to raise the rent (except for

nonpayment of rent) within two months after compliance with the regulatory requirements adopted pursuant to the bill is in retaliation for the lessee's proceeding under the bill's escrow provisions and is voidable.

#### *Mold Remediation Income Tax Credit*

The tax credit may be claimed by the owner of a residential rental property who performs or pays for the performance of mold remediation on the rental property. The tax credit is equal to 100% of the qualified mold remediation expenses incurred by the property owner during the taxable year, not to exceed \$10,000. Any unused tax credit may not be carried forward to any other tax year.

DHCD may award an annual maximum of \$600,000 in tax credits for mold remediation projects undertaken between January 1, 2022, and December 31, 2031. DHCD must initially reserve in each year \$240,000 in tax credits for mold remediation activities at single-family residences and \$360,000 for multifamily residences. Tax credit applications are approved on a first-come, first-served basis until the maximum authorized credits are awarded.

DHCD must annually report to the Comptroller's Office on the tax credits issued in the prior tax year. Additionally, DHCD and the Comptroller's Office must annually report specified tax credit information to the General Assembly. Finally, DHCD, in consultation with the Comptroller's Office and MDE, must adopt regulations implementing the tax credit.

**Current Law:** There are no statewide requirements to conduct mold assessments or remediation of rental dwelling units. Below is a summary of some relevant provisions of current law.

#### *Maryland Department of the Environment – General Duties*

The Secretary of the Environment must carry out and enforce the provisions of the Environment Article and the rules and regulations adopted under the article. The Secretary is authorized to delegate duties, powers, and functions to a health officer for a county or to another county official authorized to administer and enforce environmental laws.

Except as otherwise provided, the Secretary must pay all money collected by MDE under the Environment Article into the general fund.

#### *Home Inspectors and Minimum Livability Standards*

Title 16, Subtitle 3A of the Business Occupations and Professions Article sets forth requirements for licensed home inspectors and inspections. Generally, a home inspection

is a written evaluation of one or more of the components of an existing residential building, including the heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components, or any other related residential housing component.

The Maryland Department of Labor (MDL) 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 housing units or other housing exempted by MDL. The Minimum Livability Code must contain minimum standards for the safe and sanitary maintenance of residential structures and premises. Each political subdivision must adopt by regulation a local housing code that sets minimum property maintenance standards for housing. MDL’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. Statute also includes specific requirements regarding the inspection of multifamily dwellings with balcony railings, as specified.

#### *Rent Escrow and Residential Rental Defects*

In order to use specified remedies available when serious and dangerous defects are present in residential dwelling units, a tenant must notify the landlord of the existence of the defects or conditions using specified methods.

If the landlord refuses to make the repairs or correct the conditions, or if after a reasonable time the landlord has failed to do so, the tenant may (1) bring an action of rent escrow to pay rent into court because of the asserted defects or conditions or (2) refuse to pay rent and raise the existence of the asserted defects or conditions as an affirmative defense to an action for distress for rent or to any complaint proceeding brought by the landlord to recover rent or the possession of the leased premises.

After rent escrow has been established, the court must, after a hearing (if ordered by the court or requested by the landlord), order that the money in the escrow account be disbursed to the landlord after the necessary repairs have been made. Other permissible actions by the court, including ordering that some or all of the money in the escrow account be paid to the landlord or the tenant for the purpose of making the necessary repairs, are also specified in statute.

#### *Tax Credits*

No similar State income tax credit exists. Rental property owners under certain circumstances may deduct mold remediation expenses as ordinary and necessary business

expenses on their federal income tax return, which typically results in a lower federal and State income tax liability.

*U.S. Environmental Protection Agency Technical Guidance*

EPA has a host of programs and an extensive list of resources to help states assist school systems and commercial buildings. Among other things, these resources include a guide related to [mold remediation in schools and commercial buildings](#). EPA advises that there are no federal standards or threshold limit values for mold or mold spores, which means that sampling cannot be used to check a building's compliance with federal mold standards. However, surface sampling may be useful to determine if an area has been adequately cleaned or remediated. Similarly, MDE does not have any exposure limit standards for indoor concentrations of mold or mold spores.

**State Expenditures:**

*Maryland Department of the Environment Administrative Costs*

General fund expenditures for MDE increase by \$812,284 in fiscal 2023, which accounts for a 90-day start-up delay from the bill's July 1, 2022 effective date. This estimate reflects the cost of hiring six additional employees (four environmental compliance specialists, one environmental program manager, and one administrative specialist) for a new mold program within MDE to (1) establish policies and procedures for the inspection and remediation of mold and mold hazards; (2) promulgate regulations in consultation with MDH, DHCD, and DGS; (3) develop and make available online and in print, resource materials regarding mold hazards and mold; (4) provide oversight and assistance to local jurisdictions that are performing the inspections; and (5) generally implement the bill. It includes salaries, fringe benefits, one-time start-up costs (including contractual costs to develop the mold identification, evaluation, and analysis standards and the purchase of four vehicles), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDE does not have sufficient staff or expertise to develop the required standards related to mold, and as the lead agency, MDE bears the costs associated with hiring a contractor and generally developing the required regulations;
- there are several hundred thousand rental units, and MDE must generally oversee efforts to implement the bill; and
- current staff are fully subscribed.

Positions	6.0
Salaries and Fringe Benefits	\$328,624
Contractual Costs	300,000
Vehicle Purchases	124,152
Other Operating Expenses	<u>59,508</u>
<b>Total MDE FY 2023 Expenditures</b>	<b>\$812,284</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Because it is assumed that MDE is the lead State agency (with respect to developing the regulations that establish the uniform standards for mold assessment and remediation), this analysis assumes MDH, DGS, and DHCD can consult with MDE to develop the required regulations using existing budgeted resources.

*Department of Housing and Community Development Administrative Costs*

General fund expenditures for DHCD increase by \$171,689 in fiscal 2023, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring three additional employees (one program manager and two administrators) to (1) verify mold remediation and process and issue tax credit certificates and (2) adopt regulations, in consultation with the Comptroller’s Office and MDE, to implement the State income tax credit portion of the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$149,660
Operating Expenses	<u>22,029</u>
<b>Total DHCD FY 2023 State Expenditures</b>	<b>\$171,689</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

DHCD advises that issuing and tracking the tax credit certificates under the bill requires a new portal and case management system, similar to the “OneStop” program, and that such a system costs approximately \$200,000. Based on comparisons to other State tax credit programs, and the total eligible annual tax credit amounts under the bill, the Department of Legislative Services does not anticipate it is necessary to develop this programmatic capacity in order to implement the tax credit. However, to the extent that such an online system is necessary, general fund expenditures for DHCD increase further.

## *Comptroller's Office*

The Comptroller's Office reports that it incurs a one-time general fund expenditure increase of \$37,000 in fiscal 2023 to add the tax credit to the income tax forms. This includes data processing changes to the income tax return processing and imaging systems and systems testing.

## *Judiciary (Administrative Office of the Courts)*

The Judiciary advises that in fiscal 2019 (the last full fiscal year unaffected by restrictions on court operations due to COVID-19), there were 2,602 rent escrow filings and 669,427 landlord/tenant actions filed in the District Court. There is likely to be an increase in both rent escrow filings and civil case filings from the expansion of tenant's remedies established under the bill as well as subsequent actions brought against landlords to handle the disputes. However, any potential minimal increase in expenditures due to additional clerical and court time, as well as costs associated with updating website information and relevant forms, is not anticipated to materially affect the finances of the Judiciary.

**State Revenues:** Taxpayers can claim tax credits for qualified mold remediation activities performed between January 1, 2022, and December 31, 2031. As a result, general fund revenues decrease by \$600,000 annually in fiscal 2023 through 2032. This estimate assumes that DHCD awards the maximum authorized amount of credits in each tax year, and tax credits are claimed against the personal income tax. To the extent tax credits are claimed against the corporate income tax, a portion of tax credits claimed will decrease Transportation Trust Fund and Higher Education Investment Fund revenues.

General fund revenues may increase minimally from the bill's civil penalty provision. Penalties are likely not assessed before fiscal 2025. Because the bill is silent with regard to where any penalty revenue must be deposited, this analysis assumes that any revenue collected under the bill is deposited into the general fund.

**Local Fiscal Effect:** Depending on whether local jurisdictions already conduct inspections for affected rental dwelling units, costs for local governments and/or local health departments (LHDs) may increase significantly. Requiring routine inspections likely increases costs significantly, at least in some jurisdictions, but ultimately inspection costs depend on the content of the regulations developed under the bill. Some jurisdictions likely need to hire additional inspectors to conduct the inspections; in addition, it is likely that current inspectors need additional training to effectively and safely conduct visual inspections for mold. Because the bill specifies that landlords must pay the cost of the required mold inspections, it is assumed that a local jurisdiction can recoup any inspection costs incurred. It should be noted, however, that the bill does not provide *explicit* authority for local governments to set and collect inspection fees from landlords. In addition, it is

unclear at this time to what extent local governments may incur other related costs (such as administrative costs) not able to be recouped from landlords.

Local entities provided the following information regarding the potential fiscal effect of the bill:

- The Maryland Association of County Health Officers (MACHO) estimates that statewide costs for LHDs likely increase by millions of dollars annually. MACHO notes that LHDs are chronically understaffed and underfunded and are particularly oversubscribed at this time due to COVID-19 response activities. MACHO advises that the staffing vacancy rates at LHD environmental health departments are at more than 40%.
- Montgomery County advises that the county's code already contains provisions related to visible mold and water damage and requires corrective actions and as such, the bill is not likely to have a meaningful fiscal/operational impact.
- Prince George's County estimates that for its LHD to implement the bill, the county needs to hire 19 new staff (15 inspectors and 4 administrative/data management personnel) and that costs to implement the bill total at least \$1.8 million annually.

**Small Business Effect:** The bill may have a meaningful impact on small businesses that own or operate affected rental dwelling units to pay for mold inspections and remediation. The bill also likely results in a meaningful increase in business opportunities for mold inspectors and mold remediation businesses in the State, as a large number of rental dwelling units throughout the State will need these services to comply with the bill.

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### **Additional Information**

**Prior Introductions:** SB 70 of 2021 received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 129, received a hearing in the House Environment and Transportation Committee but was subsequently withdrawn.

**Designated Cross File:** SB 320 (Senator Patterson) - Education, Health, and Environmental Affairs.

**Information Source(s):** Caroline, Montgomery, and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment;

Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Maryland Association of County Health Officers; Department of Legislative Services

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