

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 521

(Senator Hettleman, *et al.*)

Judicial Proceedings

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Landlord and Tenant - Access to Counsel in Evictions Special Fund - Mandatory  
Appropriation

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This bill requires, beginning in fiscal 2023, that if the Governor appropriates federal rental assistance through a budget amendment, the maximum amount of any assistance that may be used for legal representation must be appropriated to the Access to Counsel in Evictions (ACE) Special Fund. Furthermore, beginning in fiscal 2024, the Governor must include in the annual budget bill an appropriation to the ACE Special Fund that is equal to the maximum amount of any federal rental assistance money that may be used for legal representation that is (1) available to the State but unappropriated *or* (2) anticipated to be received by the State before the end of the fiscal year for which the appropriation is proposed. Finally, subject to limits enacted in federal law, any excess federal rental assistance money received by the State in fiscal 2022 must be appropriated to the ACE Special Fund. **The bill takes effect July 1, 2022.**

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Fiscal Summary

**State Effect:** Special fund revenues and expenditures may increase beginning in FY 2023 to the extent that funds for the ACE Special Fund are increased under the bill's provisions, as discussed below.

**Local Effect:** Potential impact on local government operations and finances, as discussed below.

**Small Business Effect:** None.

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## Analysis

**Current Law:** Chapter 746 of 2021 established the ACE Special Fund, a special, nonlapsing fund that is administered by the Maryland Legal Services Corporation (MLSC). The fund is authorized to be used for specified purposes related to the Access to Counsel in Evictions Program (also administered by MLSC), which was created to organize and direct services and resources in order to provide individuals meeting certain criteria with access to legal representation in specified judicial or administrative proceedings to evict or terminate a tenancy or housing subsidy. Chapter 746 of 2021 further required that access to legal representation be phased in over time as MLSC determines appropriate, with the goal of full implementation before October 1, 2025. Chapter 746 did not include a funding mechanism for this legal representation.

**State/Local Fiscal Effect:** Although the bill maximizes the use of federal funds for the purpose of the ACE Special Fund, it does not directly affect the total amount of federal funds available to the State. It is also unclear to what extent the bill's directives regarding funding appropriations represent a departure from what would have been done in the absence of the bill.

The Department of Legislative Services notes that significant COVID-19 funding made available from the American Rescue Plan Act is not recognized in either the fiscal 2022 working appropriation or the fiscal 2023 allowance, totaling more than \$250 million. While some of these funds may be expended over longer time horizons, much of the funding is expected to be used in fiscal 2022 or 2023 and may be added by supplemental budget. To the extent that money is directed to the ACE Special Fund in accordance with the bill's provisions that would otherwise been appropriated for use elsewhere, special fund revenues and, presumably, expenditures for the ACE Special Fund increase; however, revenues available for other programs (generally assumed to be administratively housed within or allocated through the Department of Housing and Community Development (DHCD)) decrease correspondingly.

DHCD notes, due to the broad language of the bill, multiple existing programs (including some operated locally) that receive federal rental assistance funds through DHCD which may be used for legal services may have funds diverted instead to the ACE Special Fund, potentially impacting operations of those programs. For example, although DHCD and local grantees may use up to 10% of Emergency Rental Assistance Program (ERAP) awards for legal services, this 10% set-aside is also needed for other supportive services such as conducting intake and providing assistance with applications, landlord-tenant mediation, and case management. DHCD has already allocated \$5.4 million of its federal ERAP funding for legal services, which will be directed to the ACE Special Fund. Many local jurisdictions have also used federal relief funds to provide legal services for tenants,

totaling more than \$2.5 million from various sources, including ERAP and CARES Act funding.

Local jurisdictions may realize reduced revenues (and corresponding expenditures) if funding they would have otherwise received for rental assistance programs is instead diverted to the ACE Special Fund. However, the ACE Special Fund may be used for services provided by local jurisdictions to implement access to counsel in eviction proceedings (if a local jurisdiction implements such a program), including all costs associated with required legal representation and related outreach and education activities. Accordingly, local jurisdictions may still receive funding directly from the ACE Special Fund.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 712 (Delegate Rosenberg) - Judiciary.

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

**Fiscal Note History:** First Reader - February 14, 2022  
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