

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 545 (Delegate Lafferty)
Environment and Transportation

Landlord and Tenant - Water and Wastewater Charges - Prohibition on Ratio
Utility Billing Systems

This bill prohibits a landlord, on or after January 1, 2017, from using a “ratio utility billing system” to charge a residential tenant for water consumption or usage and wastewater or sewage use by the tenant.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. The bill’s provisions are not anticipated to have a significant impact on the finances or operations of the Judiciary.

Local Effect: The bill’s prohibitions are not anticipated to impact local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Landlord” means an owner of residential rental property with more than four dwelling units for rent on one parcel, or a person acting on behalf of a landlord.

Under the bill, a “ratio utility billing system” is a system for allocating one or more of the landlord’s aggregate utility charges by one of more of these methods: (1) per tenant;

(2) proportionately by livable square footage; (3) per unit type; (4) per number of water fixtures; or (5) by any other method that allocates the landlord's aggregate utility charges among the tenants but does not measure actual per tenant usage.

If a landlord charges a tenant separately for water and sewage, the landlord may not charge more than the actual cost of the utilities based on actual use, plus an administrative fee of up to \$2.00 for each billing. A landlord who charges a tenant for utilities in violation of the bill's restriction is liable to the affected tenant for (1) the greater of the total actual damages proximately caused or \$1,000 per violation and (2) reasonable attorney's fees. The bill does not prohibit a landlord from recovering the cost of providing water and sewage by including the costs in the fixed periodic rent or lease payment.

The bill does not apply in a county that, on or before the effective date of the bill, adopts a local ordinance concerning ratio utility billing systems for water consumption or usage and wastewater or sewage use. The bill also does not apply to a residential rental property in a condominium or a cooperative housing corporation.

Current Law: No statute specifically limits or regulates how a landlord may attribute charges for water and sewage usage among tenants.

Section 7-303 of the Public Utilities Article, however, addresses the "submetering" of apartment and commercial buildings for electricity or natural gas. "Submetering" means the installation of equipment to determine the actual use of electricity or gas per residential unit or commercial rental unit. Based on the authority included in statute, the Public Service Commission (PSC) authorizes, by regulation, an owner, operator, or manager of an apartment house (including a condominium), office building, or shopping center with a master meter to install submeters for determining the actual use of electricity or gas per unit.

A unit may not be submetered unless all units in that building are submetered. An owner, operator, or manager of a building may not impose any utility costs other than those that PSC authorizes and the gas or electric company actually imposes.

Approval from PSC is also required before an energy allocation system (a method of determining the *approximate* energy use consumed within a dwelling unit through the use of a measuring device) may be used by the owner, operator, or manager of an apartment house to determine the amount of gas or electricity used by an individual dwelling unit. PSC may approve an energy allocation system upon a demonstration by the owner that the system results in a reasonable determination of the cost of the energy use within a dwelling unit. The owner, operator, or manager may not use the energy allocation system to bill energy costs to tenants of an individual dwelling unit without PSC approval.

Background: Montgomery County regulations limit the use of ratio utility billing systems by landlords for water and sewage usage on rental properties to one of two approved formulas. The regulations also require a landlord who intends to use any other formula to first submit the plan to, and receive approval from, the Office of Landlord-Tenant Affairs.

According to the National Conference of State Legislatures, 22 states, three counties, and the District of Columbia have statutes, regulations, or rulings on utility submetering. Several states, including Alabama, Arizona, California, and Texas, have separate provisions for submetering water versus electricity. Maryland and at least two other states (Alabama and Connecticut) require a utility commission's approval for specific components of submetering policy. Submetering policies may determine if pricing is calculated volumetrically or formulaically, while one state requires pricing to be "equitable" to customers.

Generally, attorney's fees are not recoverable as damages in a civil action absent a requirement in statute, in a contractual agreement, or under the Maryland Rules. Under the Maryland Rules, a court must find that the conduct of a party in maintaining or defending a proceeding was in bad faith or without substantial justification before the court may require the offending party, the attorney advising the conduct, or both to pay the adverse party's costs, including reasonable attorney's fees.

Small Business Effect: Small business landlords that use ratio utility billing systems would no longer be able to do so beginning in calendar 2017. Such landlords would be required to either fit individual apartments with meters or include the water and sewage charges with the rent. Because the cost of installing individual water metering systems would likely be cost prohibitive, it is assumed that landlords would include any water and sewage charges in calculating the rents charged for apartments. Landlords currently using a ratio utility billing system would experience a decrease in revenue to the extent that they are unable to include these charges in calculating an apartment's rent on existing leases from January 1, 2017, until the lease expires and can be renegotiated.

Some landlords use a modified billing system for charging a tenant for water and sewage by estimating the tenant's total water and sewage use based on the apartment's usage of hot water. Those landlords would likely need to recoup the capital expenditure of installing the metering systems as well as tenant water and sewage use through higher rent charges.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), National Conference of State Legislatures, Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2016
kb/kdm

Analysis by: Nathan W. McCurdy

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