

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1331 (Delegate Oaks, *et al.*)
 Environment and Transportation

Environment - Reduction of Lead Risk in Housing - Blood Lead Level

This bill lowers the elevated blood lead level (from 10 to 5 micrograms per deciliter) at which, upon receipt of specified notice that a person at risk has an elevated blood lead level (1) an owner of an affected property is required to satisfy the modified risk reduction standard and (2) a local health department is required to notify the person at risk and the owner of the affected property.

The bill applies to blood lead levels documented on or after February 24, 2017.

Fiscal Summary

State Effect: Special fund expenditures increase by \$377,300 in FY 2017 for the Maryland Department of the Environment (MDE) to handle the significantly greater caseloads for persons at risk with elevated blood lead levels under the bill’s lower threshold; future year expenditures reflect annualization and inflation. General fund expenditures may increase, beginning in FY 2017, for the Department of Health and Mental Hygiene (DHMH) to provide technical assistance to local health departments (LHDs), as well as to coordinate and disseminate clinical guidance. Revenues are not directly affected.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	-	-	-	-	-
SF Expenditure	377,300	697,300	724,400	752,600	782,000
Net Effect	(\$377,300)	(\$697,300)	(\$724,400)	(\$752,600)	(\$782,000)

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

Local Effect: LHD expenditures increase to provide the required notice to persons at risk and support additional caseloads. In addition, expenditures may increase significantly for locally owned housing entities to comply with the modified risk reduction standard due to the bill’s lower threshold for elevated blood lead levels. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful increase in costs, due to the bill's lower threshold for elevated blood lead levels, for certain small business rental property owners to comply with the modified risk reduction standard.

Analysis

Current Law/Background:

Lead Poisoning in Children

According to the federal Centers for Disease Control and Prevention (CDC), there is no safe level of lead exposure, and adverse health effects exist in children at blood lead levels less than 10 micrograms per deciliter. Since 2012, CDC has urged health care providers and authorities to follow up on any young child with a level as low as 5 micrograms per deciliter. CDC is no longer using the 10 micrograms per deciliter level or referring to a "level of concern." The new reference level of 5 micrograms per deciliter represents the blood lead levels of children (ages one through five) in the highest 2.5 percentiles for blood lead levels.

According to MDE's 2014 Childhood Lead Registry, the most recent data available, 109,031 children younger than age six were tested out of an estimated statewide population of 527,304. In that same year, 355 children (or 0.3% of those tested) were identified as having a blood lead level of greater than 10 micrograms per deciliter, down from 371 in 2013. Of the 355 cases in 2014, 262 were new cases. An additional 2,004 children had blood lead levels between 5 and 9 micrograms per deciliter, down from 2,251 in 2013. Of those 2,004 cases, 1,607 were new cases. According to MDE, much of the decline in blood lead levels in recent years is the result of implementation and enforcement of Maryland's lead law.

Reduction of Lead Risk in Housing Law

According to MDE, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland. Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. Chapter 114 established a comprehensive plan to regulate compensation for children who are poisoned by lead paint, treat affected residential rental properties to reduce risks, and limit liability of landlords who act to reduce lead hazards in accordance with various regulatory requirements.

The Modified Risk Reduction Standard

The owner of an affected property, defined as residential rental property built before 1978, must comply with a “modified risk reduction standard” if an elevated blood lead level of *10 micrograms per deciliter* or more is found in a “person at risk” who resides on the property, or a defect is found in a property in which a person at risk resides. “A person at risk” is defined as a child or a pregnant woman who resides or regularly spends at least 24 hours per week in an affected property. Among other changes (discussed below), Chapter 610 of 2011 altered the modified risk reduction standard by requiring a lead dust test *and* the performance of specified lead hazard reduction treatments; previously, an owner could satisfy the modified risk reduction standard by passing a dust test *or* performing the treatments. Chapter 610 also altered the various treatments required for a modified risk reduction standard by (1) removing the requirement to strip paint from all interior windowsills, while maintaining the requirement to repaint, replace, or encapsulate the windowsills; (2) specifying that caps of vinyl, aluminum, or other materials are installed only in window wells where lead-based paint or untested paint exists; and (3) specifying that, when a top sash of a window is fixed, it must be done subject to fire code standards.

Finally, Chapter 610 authorized a property owner to comply with the modified risk reduction standard by providing for the temporary relocation of tenants to either a lead-free dwelling unit or another dwelling unit that has satisfied the risk reduction standard for an affected property within 30 days after the receipt of a notice of elevated blood lead level or a notice of defect.

Qualified Offer and 2011 Court of Appeals Case

Previously, if a landlord complied with the program’s regulatory provisions, Chapter 114 provided liability protection, through a qualified offer, by limiting compensation to children who resided in the rental unit to not more than \$7,500 for all medically necessary treatments and to not more than \$9,500 for relocation benefits, for a total of \$17,000. However, in a decision filed October 24, 2011, the Court of Appeals ruled that the limits on landlord liability in Chapter 114 are unconstitutional because the provisions violate Article 19 of the Maryland Declaration of Rights, which protects a right to a remedy for an injury and a right of access to the courts.

The court stated that the test to be applied under an Article 19 challenge is whether the restriction on a judicial remedy was reasonable. The court found that the \$17,000 remedy available under Chapter 114 was “miniscule” and, thus, not reasonable compensation for a child permanently damaged by lead poisoning. Therefore, the court held the limited liability provisions under Chapter 114 to be invalid under Article 19 because a qualified offer does not provide a reasonable remedy.

Changes to the Reduction of Lead Risk in Housing Law

In addition to altering the modified risk reduction standard, Chapter 610 of 2011 required MDE to conduct a study in consultation with members of the General Assembly and representatives of several State and local agencies and organizations reflecting the interests of landlords, housing owners, lead poisoning prevention advocates, and others. The study was required to evaluate processes that reduce the incidence of lead poisoning in residential properties not currently regulated by MDE, including rental properties built from 1950 through 1978 and owner-occupied properties.

The study group met seven times between July and December of 2011 and made recommendations regarding six different issues, including, among other things, expanding the scope of regulation to include rental properties built before 1978 and owner-occupied properties; increasing the program's property registration fee to address the program's declining revenue sources; and evaluating whether to require MDE to seek delegation of the federal renovation, repair, and repainting rule, which requires renovation companies to be registered and follow lead safe work practices while doing renovation in pre-1978 constructed homes.

Chapter 387 of 2012 made various changes to the Reduction of Lead Risk in Housing Law to address the 2011 Court of Appeals decision and some of the issues examined by the study group. Changes under Chapter 387 include (1) expanding the application of the law to owners of residential rental property built between 1950 and 1978 beginning January 1, 2015; (2) increasing the annual registration fee from \$15 to \$30; (3) altering the definition of "abatement" to include renovation, repair, and painting in specified properties built before 1978; (4) authorizing MDE to adopt regulations related to abatements involving renovation, repair, and painting; (5) repealing a rebuttable presumption that an owner of property that is not in compliance with the lead law is presumed to have failed to exercise reasonable care; (6) providing that evidence that a property owner was or was not in compliance with the lead law is admissible to prove that the owner exercised or failed to exercise reasonable care; and (7) requiring a party who makes certain allegations or denials without a good faith basis to pay reasonable costs, including attorney's fees, incurred by the adverse party in opposing the allegation or denial.

Lead Poisoning Prevention Fund and Enforcement

Various administrative and civil penalties apply to violations of the Reduction of Lead Risk in Housing Subtitle. Any penalties collected are paid into the Lead Poisoning Prevention Fund. That fund, which is administered by MDE, also consists of any fees collected by MDE under the Reduction of Lead Risk in Housing Subtitle and monies received by grant, donation, or appropriation, or from any other source. MDE must use the fund to cover the costs of specified duties and responsibilities of MDE and the Lead Poisoning Prevention

Commission. For each fiscal year, MDE must use at least \$750,000 from the fund for community outreach and education programs and enforcement efforts.

Maryland 2015 Lead Targeting Plan

In October 2015, the State released the *Maryland Targeting Plan for Areas at Risk for Childhood Lead Poisoning*. The revised targeting plan and accompanying proposed regulations called for blood lead testing at 12 and 24 months of age throughout the State (generally referred to as “universal testing”). Previously, only children living in certain at-risk ZIP codes or who were enrolled in Medicaid were targeted for testing.

State Expenditures:

Maryland Department of the Environment

MDE’s special fund expenditures increase by \$377,300 in fiscal 2017, which assumes a February 24, 2017 implementation date, to hire and equip five environmental compliance specialists, two advanced environmental compliance specialists, one assistant Attorney General, and two administrative specialists to handle the significantly greater caseloads for persons at risk with elevated blood lead levels under the bill’s lower threshold. MDE activities related to cases of elevated blood lead levels include confirming the type of property associated with each case, sending notices to LHDs, conducting environmental investigations, and conducting enforcement actions when the person at risk resides in a noncompliant affected property. This estimate includes costs to purchase three vehicles that are required to conduct investigations.

Positions	10
Salaries and Fringe Benefits	\$227,694
One-time Start-up Expenses	135,380
Ongoing Operating Expenses	<u>14,235</u>
Total FY 2017 MDE Expenditures	\$377,309

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

MDE plans to use special funds from its Lead Poisoning Prevention Fund to implement the bill to the extent that such funds are available. Should special funds be insufficient to cover the increased expenditures, general funds are likely needed.

Department of Health and Mental Hygiene

The Prevention and Health Promotion Administration (PHPA) within DHMH advises that, under the bill, it experiences an increased workload to provide technical assistance to LHDs, as well as to coordinate and disseminate clinical guidance. As such, PHPA anticipates requiring an additional part-time contractual employee. The Department of Legislative Services notes that it is difficult to reliably estimate the impact of the bill on PHPA at this time. Among other things, the impact of the bill cannot be completely separated from the impact of the universal testing requirement included in the 2015 *Maryland Targeting Plan for Areas at Risk for Childhood Lead Poisoning*. To the extent that the workload for PHPA increases significantly, additional resources may be required to coordinate with LHDs, and general fund expenditures increase accordingly.

Local Expenditures: Expenditures increase to provide the required notice to persons at risk and to support additional caseloads. While the full extent of the increase cannot be reliably estimated at this time, MDE data from 2014 demonstrates that while 355 children were identified as having a blood lead level of greater than 10 micrograms per deciliter, 2,004 children were identified as having blood lead levels between 5 and 9 micrograms per deciliter. As the number children with blood lead levels between 5 and 9 micrograms per deciliter in the sample captured by MDE data is more than five times the number of children with a blood lead level of greater than 10 micrograms per deciliter, when coupled with the universal testing requirement included in the 2015 *Maryland Targeting Plan for Areas at Risk for Childhood Lead Poisoning*, the data strongly suggests that the increase in notifications is significant.

In addition, expenditures may increase significantly for locally owned housing entities to comply with the modified risk reduction standard due to the bill's lower threshold for elevated blood lead levels.

Additional Information

Prior Introductions: HB 1067 of 2013 received an unfavorable report from the House Environmental Matter Committee.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Health and Mental Hygiene, Department of Housing and Community Development, Maryland Association of County Health Officers, Baltimore City, Department of Legislative Services

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