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FISCAL AND POLICY NOTE
First Reader

Senate Bill 1149

(Senator McFadden)

Judicial Proceedings

Reduction of Lead Risk in Housing - Fees and Enforcement

This bill increases, from \$30 to \$75, the annual registration fee collected by the Maryland Department of the Environment (MDE) for affected property owners. The bill also increases the fee that must accompany a specified lead report submitted by an owner of a “lead-free” or “limited lead-free” rental dwelling, from \$10 to \$75. The bill requires MDE to use the additional revenue generated by the increases in those fees to hire additional staff to conduct specified audits and spot checks. The bill also requires MDE and the Department of Health and Mental Hygiene (DHMH) to integrate registrations, inspections, and enforcement actions for lead paint in rental housing into a single database and to implement the 2015 *Targeting Plan for Areas at Risk for Childhood Lead Poisoning*. Finally, the bill establishes a reporting requirement for MDE.

Fiscal Summary

State Effect: Special fund revenues increase by \$8.78 million in FY 2017 due to the increase in fees, which reflects the bill’s October 1, 2016 effective date; future year revenues are annualized but decline by approximately 10% annually. Special fund expenditures increase by \$1.6 million in FY 2017 for MDE to hire staff; future year special fund expenditures reflect annualization and inflation. General fund expenditures increase by \$2.0 million in FY 2017 for MDE to integrate data systems with DHMH; future year general fund expenditures reflect ongoing integration costs, which are reduced beginning in FY 2019, as well as administrative costs for DHMH beginning in FY 2018.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	\$8,775,000	\$8,775,000	\$7,897,500	\$7,107,800	\$6,397,000
GF Expenditure	\$2,000,000	\$2,082,300	\$277,900	\$280,900	\$284,100
SF Expenditure	\$1,630,500	\$1,707,700	\$1,775,800	\$1,846,900	\$1,921,000
Net Effect	\$5,144,500	\$4,984,900	\$5,843,800	\$4,980,000	\$4,191,900

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

Local Effect: The bill is not anticipated to have a direct impact on local government finances or operations. It is assumed that the 2015 plan is implemented even in the absence of this bill. Thus, this bill alone should not directly affect local health departments.

Small Business Effect: Potential meaningful.

Analysis

Current Law: With specified exceptions, affected property means, as of January 1, 2015, a property constructed before 1978 that contains at least one rental unit or any residential rental property for which the owner elects to participate in specified programs. Affected property includes an individual rental dwelling unit within a multifamily rental dwelling. The owner of an affected property is required to register the property with MDE.

Risk Reduction Standard

All affected rental properties are required to pass an inspection for lead contaminated dust, performed by an MDE-accredited inspection contractor, prior to every change in occupancy. In order to pass the inspection, the property must also be free of chipping, peeling, or flaking paint on the interior and exterior of the property.

Modified Risk Reduction Standard

The owner of an affected property 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, 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.

Lead-free and Limited Lead-free Exemptions and Specified Report

An affected property is exempt from the risk reduction standards if the owner submits to MDE an inspection report that (1) indicates that the affected property has been tested in accordance with standards and procedures established by MDE; (2) states that all interior and exterior surfaces of the affected property are lead-free (lead-free exemption), or that all interior surfaces are lead-free and all exterior surfaces that were chipping, peeling, or flaking have been restored with nonlead-based paint and that no exterior painted surfaces of the affected property are chipping, peeling, or flaking (limited lead-free exemption); and (3) is verified by the MDE-accredited inspector who performed the test. In order to maintain a limited lead-free exemption, the owner must submit to MDE every two years a certification by an accredited inspector stating that no exterior painted surface of the affected property is chipping, peeling, or flaking.

Audits of Work Verifications

An owner of an affected property must verify satisfaction of the modified risk reduction standard by submitting a report from an accredited inspector to MDE. MDE may audit such a verification. If MDE, through audits conducted within 30 days of receipt of the verification, finds that the condition of the affected property does not match the submitted report, the owner must have that property inspected and treated as necessary to satisfy the modified risk reduction standard.

Spot Checks of Properties Reported or Verified as Satisfying the Modified Risk Reduction Standards

MDE may, at any time, spot check affected properties that have been (1) reported as satisfying the risk reduction standard or (2) verified as satisfying the modified risk reduction standard. If a spot check reveals that an affected property *does not* satisfy the applicable standard, MDE may order the owner of the property to satisfy the appropriate standard and require verification by an inspection conducted within 30 days of receipt of the order.

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 1 through 5) 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 6 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.

Lead-free Certificates and Recent Enforcement Actions

MDE advises that, as of January 1, 2016, 43,117 dwelling units were covered by active *limited lead-free* certificates. There are approximately 360 certified third-party inspectors in the State qualified to perform inspections for limited lead-free certificates. On average, between calendar 2011 and 2015, limited lead-free inspections were performed for 1,317 certificates per year, covering an average of 9,380 units per year.

In January 2016, MDE reported that, in coordination with the U.S. Environmental Protection Agency, it has opened an investigation to determine whether rental properties certified as *lead-free* by one private inspector are actually lead-free. The investigation was prompted after MDE found lead paint in 7 properties that had been certified as lead-free by that inspector. MDE is notifying 384 properties that were certified lead-free by the inspector to inform them of the investigation. MDE reports that it is making arrangements to retest properties that were certified lead-free by the inspector between 2010 and 2014.

MDE advises that between 2013 and 2015, there were 49 enforcement actions against inspectors, averaging approximately 16 per year.

Maryland 2015 Lead Targeting Plan

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

There is no explicit requirement in current law requiring MDE and DHMH to implement the 2015 targeting plan.

State Revenues: Special fund revenues increase by approximately \$8,775,000 in fiscal 2017 due to the increase in registration fees effective October 1, 2016. This estimate reflects \$5,850,000 in additional fee revenue due to the \$45 increase in the annual registration fee for affected properties and \$2,925,000 in additional fee revenue due to the \$65 increase in the processing fee for the lead-free or limited lead-free certificate. While earmarked under the bill to hire employees to conduct and support additional audits and sport checks, the increased revenues accrue to the Lead Poisoning Prevention Fund within MDE.

MDE advises that in calendar 2015, approximately 130,000 affected properties were registered. As renewal registration are due by December 31 of each year, this estimate assumes that all registrations pay the increased fee in the first year. Actual revenues may vary to the extent some registrations are filed before the bill's October 1, 2016 effective date. MDE also advises that an average of 60,000 units per year are newly certified as lead-free or limited lead-free. As reports for lead-free and limited lead-free certificates may be submitted at any point during the year, the estimate for fiscal 2017 is adjusted to reflect only nine months of new registrations at the increased fee level.

Revenues in the out years reflect annualization of the number of units newly certified as lead-free or limited lead-free. Out-year revenues also reflect a 10% reduction in total revenues to account for the fact that lead-free and limited lead-free certifications, as well as annual registrations, decline over time as properties are certified lead-free.

State Expenditures:

Maryland Department of the Environment

MDE advises that, pursuant to the bill's directive, it plans to hire 26 additional employees to conduct and support additional audits and sport checks, at a total cost of \$1.63 million in fiscal 2017. Thus, special fund expenditures increase by that amount, as the bill requires that the revenue generated from the increase in fees is used for this purpose. Of the 26 new

positions, 16 are environmental compliance specialists that perform the additional audits and spot checks, 3 are environmental compliance specialists that compare risk reduction certificates against registration information in MDE’s database, and 3 (2 environmental compliance specialist supervisors and 1 program manager) provide oversight and supervision of the expanded program. In addition, 4 administrative specialists are hired to mail additional enforcement correspondences, handle phone calls, and perform other administrative tasks. The estimate includes salaries, fringe benefits, one-time start-up costs (including the purchase of vehicles), and ongoing operating expenses, including postage.

Positions	26
Salaries and Fringe Benefits	\$1,233,154
One-time Start-up Expenses	356,538
Ongoing Operating Expenses	<u>40,789</u>
Total FY 2017 MDE Expenditures	\$1,630,481

MDE advises that it conducted 14 risk reduction audits in fiscal 2015. MDE further advises that it estimates that the new employees are able to conduct an additional 1,475 additional audits and spot checks each year under the bill. This tenfold increase represents what MDE characterizes as a realistic expansion of the audit and spot check capacity, given that environmental investigations of lead-poisoned children remain the agency’s priority. Were MDE to spend *all* of the increased revenue to expand its audit and spot check capacity, the total expansion would include approximately 130 new positions in fiscal 2017, and total audit and spot check capacity would exceed 7,000 annually. However, as revenues decrease over time, and expenditures increase due to inflation, MDE would need to reduce the expanded program in order to avoid drawing resources away from other activities.

Given the assumptions discussed above regarding MDE’s plan to hire 26 new staff, special fund revenues continue to exceed expenditures, and the expanded audit and spot check program continues to remain viable, for at least 10 years. However, because the bill *requires* additional revenue from the increased fees to be used to hire additional staff to conduct audits and spot checks, revenues not used in any given year need to be set aside to cover the program once annual expenditures exceed annual revenues.

Integrating Data Systems with DHMH: MDE has examined the possibility of implementing an integrated data system, but does not have an estimate of the cost to produce the system or to conduct future upgrades and service on the database at this time. However, it is expected that a relational database of this magnitude could cost several million dollars to implement, with significant costs for ongoing maintenance. For purposes of this analysis, it is assumed that such expenditures total \$2 million in both fiscal 2017 and 2018. Ongoing maintenance costs are assumed to be \$200,000 annually thereafter. These costs are *not* covered by the increased fee revenue, which is only authorized to be

used for hiring additional staff for risk reduction audits and spot checks. Thus, it is assumed that these costs are borne by the general fund.

Maryland 2015 Lead Targeting Plan: MDE is already in the process of implementing the 2015 targeting plan. The plan requires more children to be tested. Therefore, it is possible that more instances of elevated blood lead level are discovered than in previous years. However, as implementation is already underway, and because the extent to which increased testing results in additional instances where elevated blood lead levels are detected is unknown, the effect of the required implementation of the plan under the bill cannot be reliably quantified at this time.

Prevention and Health Promotion Administration

Beginning in fiscal 2018, general fund expenditures increase by \$82,314 for the Prevention and Health Promotion Administration, within DHMH, to hire one epidemiologist to monitor the integrated databases for DHMH, and to compile and utilize data available from DHMH to assist in the integration of registrations, inspections, and enforcement actions for lead paint in rental housing. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate assumes that certain components of the relational database envisioned by the integration are functional by fiscal 2018.

Position	1
Salary and Fringe Benefits	\$72,156
One-time Start-up Expenses	7,328
Ongoing Operating Expenses	<u>2,830</u>
Total FY 2018 DHMH Expenditures	\$82,314

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

This analysis assumes that MDE bears the cost to integrate their database systems. In addition, the analysis assumes that DHMH is already in the process of implementing the 2015 targeting plan and that any costs DHMH incurs to do so are incurred even in the absence of this bill.

Small Business Effect: Costs increase by \$45 per unit, per year to small business owners who own and register affected properties. Costs also increase by \$65 per unit newly certified as lead-free. To the extent that the bill encourages small businesses to have properties certified as lead-free in lieu of completing annual registration and risk reduction requirements, the additional costs would be mitigated in the long run, as the lead-free processing fee is a one-time cost.

Additional Information

Prior Introductions: None.

Cross File: HB 810 (Delegate Rosenberg, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of the Environment, Department of Health and Mental Hygiene, Department of Housing and Community Development, State Department of Assessments and Taxation, Baltimore City, Baltimore and Prince George's counties, Department of Legislative Services

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Analysis by: Nathan W. McCurdy

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