

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 840

(Senator Gladden)

Judicial Proceedings

Environment - Reducing Lead Risk in Housing - Risk Reduction Standards

This bill requires an owner of an affected property under the Reduction in Lead Risk in Housing Program to satisfy the risk reduction standard at each change of occupancy by passing the test for lead-contaminated dust. The bill repeals the option to satisfy the standard by performing specified lead hazard reduction treatments. The bill makes more stringent the modified risk reduction standard (required under current law on finding an elevated blood lead level or a defect) by requiring that a property pass a dust test *and* that specified lead hazard reduction treatments be performed. The bill also modifies several lead hazard reduction treatments and allows for compliance with the modified risk reduction standard by providing for the temporary relocation of tenants to specified properties. Finally, the bill alters the verification requirements for satisfaction of the modified risk reduction standard, alters the penalties applicable to violations of the Reduction of Lead Risk in Housing laws, and requires that a specified study be conducted.

The bill generally takes effect January 1, 2012. However, the requirements to conduct the study and to adopt regulations related to reporting of dust testing laboratory results take effect July 1, 2011.

Fiscal Summary

State Effect: The bill creates an additional operational burden for the Maryland Department of the Environment (MDE) for administrative processing, training of lead inspectors, conducting the required study, and development of regulations. However, this burden can be handled with existing budgeted resources. The bill's civil penalty provision are not expected to significantly affect State revenues.

Local Effect: The bill may impose additional costs on municipally owned housing entities.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires an owner of an affected property to satisfy the risk reduction standard at the initial and each subsequent change of occupancy by passing the test for lead-contaminated dust. At each change in occupancy, an owner of affected property must have the property inspected to verify that the risk reduction standard has been satisfied. The bill maintains the existing condition that, at the initial change in occupancy, any chipping, peeling, or flaking paint be removed or repainted on the interior and exterior surfaces of the property. However, the option to satisfy the risk reduction standard by performing specified lead hazard reduction treatments is repealed.

The bill alters the modified risk reduction standard by requiring both the test for lead-contaminated dust *and* the performance of specified lead hazard reduction treatments. Several of the specified treatments are altered by:

- removing the requirement to strip paint from all interior windowsills, while maintaining the requirement to repaint, replace, or encapsulate the windowsills;
- specifying that caps of vinyl, aluminum, or other materials are installed only in window wells where lead-based paint or untested paint exists; and
- specifying that, when a top sash of a window is fixed, it must be done subject to fire code standards.

The bill also allows 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. The bill requires that the satisfaction of the modified risk reduction standard be verified by submitting a report from an accredited inspector and repeals the option to submit a statement of the work that is verified by the tenant and an accredited supervisor or contractor. Also repealed is the requirement to submit the report within a specified time period.

The bill also authorizes the enforcement of the Reduction Lead Risk in Housing laws through civil penalties of up to \$25,000 per violation; each day that a violation occurs constitutes a separate violation.

MDE must conduct a specified study in consultation with members of the General Assembly and representatives of specified State and local agencies and organizations reflecting the interests of landlords, housing owners, and lead poisoning prevention

advocates, among others. The study must evaluate processes that reduce the incidence of lead poisoning in affected and nonaffected properties, including rental properties built from 1950 through 1978 and owner-occupied properties. The bill lists several specific issues that must be studied and requires MDE to report the results of the study to the General Assembly by December 31, 2011.

MDE must also adopt regulations related to reporting requirements of dust testing laboratory results.

Current Law: Chapter 114 of 1994 established the Lead Paint Poisoning Prevention Program within MDE. The program provides limited liability relief for owners of rental property built before 1950 and others in exchange for the reduction of lead hazards in these older rental properties. The program also provides for limited compensation to children who are poisoned by lead. By December 31, 1995, the owner of an affected property must have registered that property with MDE. An owner who first acquires affected property after that date must register the property within 30 days of acquisition. At each change in occupancy, before the next tenant occupies the property, an owner must satisfy the risk reduction standard by passing the test for lead-contaminated dust *or* performing specified lead hazard reduction treatments. Except for affected properties that pass the dust test, at each change in occupancy, an owner of affected property must have the property inspect to verify that the risk reduction standard has been satisfied. An affected property is exempt from the risk reduction standards under specified conditions. An affected property is one that is built before 1950 or owned by a person electing to comply with the reduction of lead risk in housing subtitle of the Environment Article.

The specified treatments include (1) a visual review of all painted surfaces; (2) the removal and repainting of flaking paint on all painted surfaces; (3) the repair of any structural defect that is causing paint to flake that the owner should have knowledge of; (4) stripping and repainting, replacing, or encapsulating all interior windowsills with vinyl, metal, or any other material approved by the department; (5) ensuring that caps of vinyl, aluminum, or any other material approved by the department are installed in all window wells; (6) fixing the top sash of all nontreated windows; (7) rehanging all doors necessary to prevent the rubbing together of a lead-painted surface; (8) making all bare floors smooth and cleanable; (9) ensuring all kitchen and bathroom floors are overlaid with a smooth, water-resistant covering; and (10) HEPA vacuuming and washing of the interior of the affected property with high phosphate detergent or its equivalent, as determined by the department.

A modified risk reduction standard must be complied with if an elevated blood lead level 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.

A modified risk reduction standard consists of many of the same treatment requirements as the standard risk reduction standard, except that there is no requirement to make all bare floors smooth and cleanable, and the HEPA vacuuming only needs to be done around areas where repairs were done. If a spot check by MDE reveals that an affected property that has been verified as satisfying the modified risk reduction standard, but has not been reported as satisfying the risk reduction standard, MDE may order the owner of the property to satisfy the modified risk reduction standard, as verified by an inspection conducted within 30 days of receipt of the order.

An owner of an affected property must verify satisfaction of the modified risk reduction standard by submitting a statement of the work performed on the property, verified by the tenant and an accredited supervisor or contractor, to MDE by the tenth day of the month following the month in which the work was completed. If the tenant fails or refuses to verify the statement of work performed on the affected property, the owner must contact an accredited inspector within five days to inspect the affected property. The inspector's report has to either certify that the work required to be performed was satisfactorily completed or specify precisely what additional work is still required.

The statement verified by the owner and the tenant of work performed on the affected property, or the final report of the inspector, creates a rebuttable presumption, that may be overcome by clear and convincing evidence, that the owner is in compliance with the modified risk reduction standard for the affected property except under limited specified circumstances. The statement verified by the owner and the tenant must contain a statement notifying the tenant that signing the statement can affect the tenant's legal rights.

In addition to being subject to an injunctive action, a person who violates provisions of the Reduction of Lead Risk in Housing Law (except for registration requirements), is liable for an administrative penalty of up to \$500 per day. The administrative penalty must be assessed with consideration given to specified mitigating and aggravating factors.

Background: According to the federal Centers for Disease Control and Prevention (CDC), adverse health effects exist in children at blood lead levels less than 10 micrograms per deciliter. No treatments are known to lower the blood lead levels for children with lead levels less than 10 micrograms per deciliter. Measuring blood levels below the 10 micrograms per deciliter threshold is difficult. Therefore, although CDC warns there are no safe blood lead levels, the 10 micrograms per deciliter threshold is the standard measure at which statistics are reported.

According to the most recent data available, the number of children with elevated blood lead levels has been decreasing at both the State and national level. At the State level,

out of the 107,416 children age six who were tested for lead in 2009, 554 (0.5%) were found to have blood lead levels greater than 10 micrograms per deciliter. This compares with 23.9% in 1993, the first year in which these data were tracked, and is the seventeenth straight year in which the rate has dropped in Maryland. According to MDE, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland.

MDE advises that, while the incidence of blood lead poisoning continues to decrease, the children with elevated blood levels of lead are likely to live in homes not covered by Maryland's lead law, such as owner-occupied or rental properties built between 1950 and 1978, the year the federal lead law went into effect.

Local Fiscal Effect: The bill may cause local governments to incur additional costs for the expanded treatment of affected properties which they own. However, the extent of the additional costs and whether they are offset by savings created by other provisions cannot be reliably estimated. Baltimore City owns several thousand affected rental properties. Because the bill does not create a significant additional enforcement burden, Baltimore City advises that the bill's changes can be absorbed within the budget of the Housing Authority of Baltimore City. In Maryland, housing authorities are public bodies corporate and politic, generally dependent on federal funds and rents collected from tenants.

Small Business Effect: More than 30,000 property owners have registered their properties with MDE under the Reduction of Lead Risk in Housing Program. Though tens of thousands of pre-1950 rental units have been certified as lead-free under the program, many pre-1950 rental units remain subject to the risk reduction requirements. Affected landlords may incur additional costs and may also realize savings due to the bill's changes. Businesses performing dust tests, and inspections benefit from an increase in the demand for their services, but businesses conducting lead risk reduction treatments may be negatively affected to the extent the bill reduces the number of such treatments performed.

According to MDE, about 76% of landlords satisfying the lead reduction risk standard in 2009 performed a lead dust test, with the remaining 24% performing lead hazard reduction treatments. MDE advises that lead dust tests average \$300 and performance of lead hazard reduction treatments range between \$800 and \$2,500; however, the estimated range of costs for lead hazard reduction treatments may include significant costs associated with work that may already be required under current local housing codes.

Additional Information

Prior Introductions: A similar bill, HB 1153 of 2010, received an unfavorable report from the House Environmental Matters Committee. Its cross file, SB 504, received a favorable report from the Senate Judicial Proceedings Committee, but failed on third reading in the Senate. Another similar bill, HB 236 of 2009, received a hearing by the House Environmental Matters Committee, but no further action was taken. SB 361 of 2009 failed on third reading in the Senate. In addition, HB 1173 of 2008 received a hearing by the House Environmental Matters Committee but was later withdrawn. HB 1446 of 2006, another similar bill, was heard by the House Environmental Matters Committee, but no further action was taken.

Cross File: Although HB 1033 (Delegates Oaks and McIntosh - Environmental Matters) is designated as a cross file, it is different.

Information Source(s): Baltimore City, Maryland Department of Planning, Maryland Department of the Environment, Department of Housing and Community Development, Department of Health and Mental Hygiene, Centers for Disease Control and Prevention, Department of Legislative Services

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