

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

House Bill 1013 (Delegates Rosenberg and Oaks)
 Environmental Matters

Environment - Lead Poisoning - Primary Prevention Fund

This bill establishes a Lead Poisoning Primary Prevention Fund in the Maryland Department of the Environment (MDE) to be used for specified costs of MDE and the existing Lead Poisoning Prevention Commission and to provide grants to eligible recipients for specified lead poisoning primary prevention activities. The Governor must include in the annual budget bill a general fund appropriation to the fund in an amount not less than \$20.0 million annually from fiscal 2014 through 2018. In those years, funds must be distributed as follows: \$18.0 million for lead poisoning primary prevention; \$1.5 million for the existing Lead Poisoning Prevention Fund; and \$500,000 for lead poisoning primary prevention public education, legal services, and community outreach. The bill establishes various requirements related to the administration and distribution of grants and grant eligibility. MDE must adopt implementing regulations.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$20.0 million annually between FY 2014 and 2018 due to the mandated appropriation to capitalize the special funds. Special fund revenues and expenditures increase correspondingly. It is assumed that the bill does not impact State finances in FY 2013, despite the bill's July 1, 2012 effective date. **This bill establishes a mandated appropriation beginning in FY 2014 and ending in FY 2018.**

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000
GF Expenditure	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000
SF Expenditure	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000	\$20,000,000
Net Effect	(\$20,000,000)	(\$20,000,000)	(\$20,000,000)	(\$20,000,000)	(\$20,000,000)

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

Local Effect: Local government revenues increase for locally owned housing entities that receive grants as a result of the bill.

Small Business Effect: Meaningful beneficial impact on small business rental property owners that receive grants under the bill, contractors engaged in lead paint inspection, abatement, or renovation activities that realize an increase in demand for their services, and firms engaged in lead poisoning prevention public education, legal services, and community outreach activities.

Analysis

Bill Summary: MDE must use the fund to cover the costs of MDE and the Lead Poisoning Prevention Commission in administering the Reduction of Lead Risk in Housing Subtitle and for program development activities.

Money distributed from the fund must be in the form of a grant, and the administration and distribution of grants must be conducted by a qualified independent third party. To be eligible for a grant, an applicant must (1) own property constructed before 1978 that contains lead hazards as identified by a lead risk assessment; and (2) have an annual household income equal to or less than 80% of the median income for the area *or* rent the property to an individual with an annual household income equal to or less than that percentage.

Grant applicants must be ranked in a specified manner. Grant recipients may not have a repayment obligation if the recipient complies with the terms of the “owner agreement.” “Owner agreement” means an agreement between the grant recipient and the qualified independent third party specifying the number of years the recipient must rent the recipient’s residential property to low-income families in order to maintain eligibility for the grant.

Money distributed from the fund must include funding for the replacement of all windows containing lead-based paint.

Current Law/Background:

Reduction of Lead Risk in Housing Law

Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. Chapter 114 establishes 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.

If a landlord complies with the regulatory provisions, Chapter 114 provides 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. Compliance with Chapter 114 includes having registered with MDE, having implemented all lead risk reduction treatment standards, and having provided notice to tenants about their legal rights and specified lead poisoning prevention information. The liability protection provisions of Chapter 114, however, have been rendered invalid by a recent Maryland Court of Appeals decision.

The Lead Poisoning Prevention Fund, which is administered by MDE, consists of any fees collected by MDE under the Reduction of Lead Risk in Housing Subtitle; any penalties collected under that subtitle; and any moneys received by grant, donation, 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.

Court of Appeals Deems Liability Limitation Unconstitutional

In a decision filed October 24, 2011 (*Jackson, et al., v. Dackman Co. et al.*, No. 131, September Term 2008), 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. Article 19 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.

Owners of pre-1950 rental units that are in compliance with Chapter 114 and owners of rental units built between 1950 and 1978 that voluntarily opted to comply will be impacted by the court’s decision, as they will no longer have the liability protection previously afforded to them. However, it is not yet clear how landlords, along with tenants, will be impacted by the decision.

MDE 2011 Lead Study

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 both affected and nonaffected properties, 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, which are contained in a report issued on December 31, 2011.

Expansion of the Reduction of Lead Risk in Housing Law to Rental Units Built Between 1950 and 1978

The study group considered expanding the properties subject to the State's Reduction of Lead Risk in Housing Law to also include rental housing built between 1950 and 1960 or to cover all rental housing built prior to 1978. Members of the study group representing property owners expressed concern about an expansion of regulation given the recent Court of Appeals' decision that overturned the limited liability protections of the State's lead law for property owners. The study group recommended further examination of this issue following a more detailed study by MDE and the Department of Health and Mental Hygiene of blood lead testing data.

Funding to Support Current Law Program and Any Future Expansion

The study group also discussed the long-term decline in funding for MDE's Lead Poisoning Prevention Program, which has been caused in significant part by a reduction in federal funds. Moreover, the study group discussed the likelihood that these federal sources of funding will be reduced further in the next several fiscal years. Thus, the study group found that, not only will additional funding sources be needed to support any recommended expansion of the program, but greater funding will also be needed to sufficiently administer the current program. Several sources of additional funds were discussed, including increasing the program's current registration fee and establishing a fee on each gallon of paint sold. The study group recommended increasing the registration fee from \$15 per unit to \$30 per unit.

Lead Poisoning in Children

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 in Maryland with elevated blood lead levels has continued to decrease since the onset of the program. At the State level, out of the 114,829 children age six who were tested for lead in 2010, 531 (0.5%) were found to have blood lead levels greater than or equal to 10 micrograms per deciliter. This compares with 23.9% in 1993, the first year in which these data were tracked, and is the eighteenth 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.

State Fiscal Effect: The bill's mandated appropriation results in an increase in general fund expenditures of at least \$20.0 million annually from fiscal 2014 through 2018, with a corresponding increase in special fund revenues for the newly established Lead Poisoning Primary Prevention Fund and the existing Lead Poisoning Prevention Fund within MDE. Special fund expenditures increase correspondingly between fiscal 2014 and 2018 to support the following uses, as specified in the bill:

- \$18.0 million for lead poisoning primary prevention grants, which will be the likely source of funding for the required window replacement;
- \$1.5 million for the existing Lead Poisoning Prevention Fund, which will be used in part to cover MDE's administrative costs to implement the bill, including costs to hire three staff and an independent third-party grant administrator; and
- \$500,000 for lead poisoning primary prevention public education, legal services, and community outreach grants.

This analysis assumes that all special funds are spent in the year in which they are received and that every grant recipient executes an owner agreement and thus does not have a repayment obligation under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, State Department of Assessments and Taxation, Department of Budget and Management, Maryland Department of the
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Environment, Department of Housing and Community Development, Comptroller's Office, Judiciary (Administrative Office of the Courts), U.S. Centers for Disease Control and Prevention, Department of Legislative Services

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