

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

House Bill 977 (Delegates Rosenberg and Oaks)
 Environmental Matters

Environment - Reduction of Lead Risk in Housing - Renovations and Repairs

This bill relates to the Reduction of Lead Risk in Housing Program administered by the Maryland Department of the Environment (MDE). Specifically, the bill requires an activity that disturbs more than three square feet of painted surface in an owner-occupied residential dwelling unit built before 1978 or a residential rental unit built before 1978 to pass the test for lead-contaminated dust. The bill also authorizes MDE to administer a renovation, repair, and painting program consistent with specified federal regulations and requires MDE to seek authorization to enforce those federal regulations by March 31, 2013.

Fiscal Summary

State Effect: General/special fund expenditures increase by about \$624,100 in FY 2013 for MDE to hire additional personnel within the Lead Poisoning Prevention Program to implement the bill. Special fund revenues may increase from accreditation fees and the application of existing penalties. Future years reflect annualization and inflation.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	-	-	-	-	-
GF/SF Exp.	\$624,100	\$466,400	\$493,400	\$513,700	\$534,900
Net Effect	(\$624,100)	(\$466,400)	(\$493,400)	(\$513,700)	(\$534,900)

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

Local Effect: Local government expenditures increase to perform lead dust tests required by the bill for jurisdictions that own residential property built before 1978. Additional costs may be significant for locally owned housing entities with a large number of properties subject to the bill’s lead dust test requirements.

Small Business Effect: Meaningful.

Analysis

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, among other things, having registered with MDE and having implemented all lead risk reduction treatment standards, which includes passing a lead dust test at each change in occupancy and with each modified risk reduction standard. The liability protection provisions of Chapter 114, however, have been rendered invalid by a recent Maryland Court of Appeals decision.

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 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.

Lead Accreditation

In general, unless a person is accredited by MDE, a person may not act as a contractor to others who provide lead paint abatement services or engage in the inspection of lead-based paint hazards. MDE may create exceptions to the accreditation requirement under specified conditions. An individual who acts only as a worker or project designer need not be accredited, but must be trained.

MDE is required to set reasonable fees for the accreditation of persons who provide lead paint abatement services sufficient to cover its direct and indirect costs of administering the Accreditation of Lead Paint Abatement Services Subtitle. Under current regulations, application fees generally range from \$125 to \$300. Those fees, as well as specified penalties, must be deposited in the Lead Accreditation Fund, which is used by MDE for activities that are related to processing, monitoring, and regulating the accreditation of lead paint abatement services and for program development of these activities.

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.

Delegation Authority for MDE to Implement Federal RRP Rule

The study group examined the U.S. Environmental Protection Agency's (EPA) Renovation, Repair, and Painting (RRP) rule, which requires renovation companies to be registered and follow lead-safe work practices while doing renovation in pre-1978 constructed homes. Maryland has required accreditation for workers doing lead abatement, which includes lead risk reduction work in pre-1950 rental properties. However, the federal rule also covers renovation in any homes built pre-1978. Since the federal rule can be delegated to the states, the study group agreed that Maryland should seek delegation for MDE to implement and enforce the RRP rule. Although some members of the study group expressed concern as to the expanded scope of a future State program and funding to implement the program, it was recommended that MDE should seek delegation of authority from EPA to implement the RRP rule.

Expansion of Lead Protection to Owner-occupied Housing

The study group discussed two means to address lead issues in owner-occupied houses, in addition to the RRP rule. First, local health departments could be given explicit authority to issue abatement orders in owner-occupied houses where children with elevated blood lead levels reside. Second, a dust test, or some other quantitative clearance procedure, could be required along with disclosure of the results to a prospective homebuyer at the time a property is sold. The study group expressed concern over the additional costs this

would impose on the home-buying process at a time when the housing market is already depressed. The study group recommended that legislation be proposed to grant authority for local health departments to order lead abatements, but it decided that further discussion may be warranted before recommending that a lead dust test or other procedure be required at the time of sale.

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

The study group also considered expanding the properties subject to the 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.

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 Expenditures: General/special fund expenditures increase by \$624,075 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring three environmental compliance specialists, two assistant Attorneys General, and one administrative specialist; the purchase of two automobiles and specialized lead paint instruments; and contractual assistance for outreach, education, monitoring, and data entry. These costs represent the additional resources needed by

MDE to monitor additional housing units subject to dust testing and to implement the federal RRP rule, which is anticipated to significantly expand the number of lead paint abatements service providers accredited and overseen by MDE. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	6
Salaries and Fringe Benefits	\$282,129
Contractual Assistance	164,775
Equipment	83,065
Automobile Purchase and Operations	47,285
Other Operating Expenses	<u>46,821</u>
Total FY 2013 State Expenditures	\$624,075

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

Even though the bill does not require MDE to seek federal authorization to implement the RRP program until March 31, 2013, it is assumed that MDE hires staff and incurs costs beginning on the effective date of the bill in order to begin implementing a program consistent with the federal RRP rule and to oversee additional dust testing, as required by the bill.

It is assumed that MDE will use special funds to implement the bill to the extent such funds are available. If special funds are not sufficient, general funds will be needed.

To the extent that MDE's workload decreases once the initial implementation of the federal RRP has been completed, MDE expenditures could decrease.

State Revenues: Special fund revenues to the Lead Accreditation Fund from accreditation fees could increase beginning in fiscal 2013 to the extent MDE accredits additional lead paint abatement service providers as a result of the implementation of the federal RRP rule. Although a reliable estimate cannot be made at this time, special fund revenues may increase by \$28,125 in fiscal 2013, which reflects the bill's October 1, 2012 effective date and is based on the following information and assumptions:

- MDE currently accredits and provides oversight of approximately 4,500 lead abatement service providers and once the federal RRP rule is fully implemented, this number could at least triple;
- MDE receives about \$150,000 annually in accreditation fee revenues under current law;

- accreditation fee revenues increase by 25% in fiscal 2013 as additional lead paint abatement service providers are accredited as a result of the implementation of the federal RRP rule.

The increase in special fund revenues may vary significantly from the above estimate as there is considerable uncertainty regarding the number of additional lead abatement service providers that may seek accreditation and when this may occur. Future year revenues would continue to increase for several years as additional service providers become accredited and pay the applicable fees, and then decrease once most providers are accredited.

Special fund revenues to both the Lead Poisoning Prevention Fund and the Lead Accreditation Fund could increase from the application of existing penalties to the provisions of the bill.

Small Business Effect: Small business owners of residential property built before 1978 may incur a meaningful increase in costs to pass lead dust tests whenever disturbing more than three square feet of painted surface. Lead dust tests typically cost around \$300.

Small business contractors engaged in the inspection, abatement, or renovation of properties with lead paint, as well as businesses that administer lead dust tests, may realize a meaningful increase in the demand for their services. However, some lead contractors may also incur additional costs to pay accreditation fees to MDE as a result of the bill. MDE advises that there are currently about 4,500 lead abatement service providers accredited and overseen by MDE, but that at least 15,000 providers are expected to be accredited once the RRP rule is fully implemented. Small businesses engaged in the training of lead contractors subject to the RRP rule may also realize a meaningful increase in the demand for their services.

Additional Comments: Because the bill does not specifically alter the definition of “affected owner” under the Reduction of Lead Risk in Housing Subtitle, it is assumed that any additional property owners affected by the bill (*i.e.*, specified dwelling units built before 1978 where an activity occurs that disturbs more than three square feet of painted surface) are not required to register with MDE or pay the annual registration fee.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Howard, Montgomery, and Prince George's counties; Baltimore City; Maryland Department of the Environment; Department of Housing and Community Development; U.S. Centers for Disease Control and Prevention; Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2012
ncs/lgc

Analysis by: Evan M. Isaacson

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