

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 947
Rules

(Senator Gladden)

Environment - Reducing the Incidence of Lead Poisoning

This bill makes various changes to the Reduction of Lead Risk in Housing Law administered by the Maryland Department of the Environment (MDE). Among other things, the changes (1) expand the application of the law to owners of residential rental property built between 1950 and 1978; (2) increase the annual registration fee from \$15 to \$30; (3) authorize MDE to administer a renovation, repair, and painting program funded by specified accreditation fees; and (4) create a rebuttable presumption that a person at risk with elevated blood lead did not ingest lead in an affected property if the owner was in compliance with specified provisions of law. The bill also requires that purchasers of specified property built before 1978 receive the results of a lead-contaminated dust test prior to contract settlement, except under specified conditions.

Fiscal Summary

State Effect: Special fund revenues increase significantly beginning in FY 2013 as a result of the increase in the registration fee and the expanded scope of rental property owners that pay registration and other fees; the application of existing penalties to the bill could also result in an increase in special fund revenues. Special fund expenditures increase significantly beginning in FY 2013 for personnel, equipment, and contractual costs necessary to significantly expand the current Lead Poisoning Prevention Program and to institute a renovation, repair, and painting program. While a reliable estimate cannot be made at this time, it is likely that special fund revenues increase by more than special fund expenditures and to a sufficient extent to cover these expenditures, as discussed below.

Local Effect: Local health department expenditures increase to the extent the department opts to exercise the additional authority to order abatements under the bill. Costs may increase significantly for locally owned housing entities that become subject

to regulation as a result of the bill. Local government revenues may increase significantly as a result of additional grant funding provided by MDE.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Affected Property

The bill expands the definition of “affected property” under the Reduction of Lead Risk in Housing Law to include rental property constructed between 1950 and 1978; currently, the law only applies to rental property constructed before 1950, unless a residential rental property owner elects to participate in the program. The bill specifies that it is the intent of the General Assembly that an owner of affected property built between 1950 and 1978 be in compliance with the Reduction of Lead Risk in Housing law by January 1, 2013.

Annual Registration Fees

The bill increases the annual registration fee for an affected property from \$15 to \$30.

New Renovation, Repair, and Painting Program

The bill authorizes MDE to administer a renovation, repair, and painting program consistent with a specified federal regulation. MDE is required to set reasonable fees for the accreditation of those who provide renovation or renovation training services; the fees must be set at a level that is sufficient to cover its direct and indirect costs to administer the program. Accreditation fees are paid into the Lead Accreditation Fund, as are any additional grants that MDE is authorized to accept.

Rebuttable Presumption

The bill establishes a rebuttable presumption that a person at risk with elevated blood lead did not ingest lead in an affected property if the owner of the affected property (1) has given required notices to the tenant; and (2) was in compliance with the registration provisions and the applicable risk reduction standard, response standard, and risk reduction schedule. The presumption may be rebutted by clear and convincing evidence.

Abatements

The bill authorizes MDE or a local health department to order an abatement following an environmental investigation in response to a report of a lead poisoned person at risk. Currently, only a local jurisdiction is authorized to do so.

Contracts for Sale of Property and Lead Dust Tests

At least seven days before settlement of a contract for the sale of property on which a dwelling built before 1978 is located, a vendor must deliver to each purchaser the results of a lead-contaminated dust test performed for the property. A purchaser may waive in writing the right to receive the results.

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.

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.

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.

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 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 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 legislation 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 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 this 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 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 Revenues: Although a reliable estimate cannot be made at this time, special fund revenues for the Lead Poisoning Prevention Fund and Lead Accreditation Fund may increase by about \$7.5 million in fiscal 2013, which reflects not only the bill's October 1, 2012 effective date, but also the current registration cycle and the bill's compliance deadline for newly affected properties, under the following assumptions:

- the owners of about 165,000 rental units built between 1950 and 1978 will pay the \$30 annual registration fee, which is half of the estimated 330,000 such units;
- owners of the other 165,000 rental units built between 1950 and 1978 will instead pay a \$10 processing fee for obtaining a lead-free certificate;
- about 90,000 owners of rental properties built before 1950 will pay a \$15 increase in the fee under the bill;
- there are currently about 85,000 properties that have been certified as lead-free or limited lead-free; and
- 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.

Future year revenues likely increase to a lesser extent as the significant number of rental property owners that initially obtain a lead-free certificate in fiscal 2013 do not pay registration or certificate processing fees in future years. Further, the number of registered rental properties is expected to decrease each year as additional units are certified as lead-free or as some properties are abandoned or demolished. The increase in lead accreditation fee revenues may vary significantly from this estimate as there is considerable uncertainty regarding the number of additional lead abatement service providers that may seek accreditation and when this may occur.

Special fund revenues could also increase due to the application of existing penalties to the provisions of the bill. Any such increase cannot be reliably estimated at this time, but it could be significant since the bill expands the universe of regulated entities.

State Expenditures: Special fund expenditures increase significantly, primarily to handle the expanded universe of properties subject to regulation under the bill and to implement a program consistent with the federal RRP rule. While a reliable estimate of the additional expenditures necessary to implement a programmatic expansion of this magnitude cannot be made, MDE has provided an estimate, which may provide context as to the potential for increased costs.

According to MDE, its expenditures may increase by about \$2.8 million in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring 19 additional staff to handle the additional residential properties that will be subject to regulation under the bill and to implement the federal RRP rule. The estimate includes salaries, fringe benefits, two automobiles, specialized lead detection equipment, contractual assistance for outreach and data entry, and ongoing operating expenses. The estimate also reflects \$800,000 annually in additional grants, which MDE advises that it would provide to local governments with the additional fee revenue generated by the bill.

Positions	19
Salaries and Fringe Benefits	\$780,409
Contractual Assistance	885,800
Grants to Local Governments	800,000
Equipment	145,920
Automobile Purchase and Operations	48,563
Other Operating and Start-up Costs	<u>124,311</u>
Total FY 2013 State Expenditures	\$2,785,003

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

It is assumed that the increase in special fund revenues generated under the bill will be used by MDE to support any additional expenditures. However, depending on the timing of the collection of the fee revenues, it is possible that general funds may be needed in fiscal 2013 to cover some of these additional costs. To the extent that MDE's workload decreases once the initial implementation of the federal RRP has been completed, MDE expenditures could decrease.

Local Revenues: As noted above, to the extent funds are available, MDE advises that it would provide additional grant funding to local governments for outreach and education activities. Thus, local grant revenues may increase significantly.

Local Expenditures: Although the bill does not require local health departments to issue abatement orders, to the extent local health departments use the authority provided by the bill, expenditures may increase for that activity. For example, Carroll County advises that if it were to use the bill's authority to issue abatement orders, it would require significant additional staffing.

Local government expenditures for locally owned rental properties (such as housing authorities) may increase significantly, as the bill expands the universe of regulated property under the lead law. Thus, additional units likely become subject to regulation and must comply with the risk reduction treatments and other requirements of the lead law.

Small Business Effect: The bill expands the application of the Reduction of Lead Risk in Housing Law to owners of rental property built between 1950 and 1978. There are an estimated 330,000 rental units built between 1950 and 1978. Thus, many additional small business rental property owners are required to register with MDE, pay the registration and other fees, comply with currently required tenant notice and information disclosure requirements, and undertake risk reduction treatments at each change in occupancy and whenever otherwise required. Although these small business rental

property owners may incur a meaningful increase in compliance costs, the bill also establishes a rebuttable presumption in their favor that may result in lower costs associated with litigation over lead poisoning of tenants and a greater chance of obtaining a favorable judgment.

The bill may also have a meaningful impact on small business contractors engaged in lead inspection, abatement, renovation, or renovation training activities. These contractors may realize a meaningful increase in the demand for their services. However, the bill authorizes MDE to adopt a program consistent with the federal RRP rule, which will likely result in an increase in costs to pay accreditation fees for some contractors that may not have previously been regulated.

The bill may result in a meaningful increase in revenues for contractors that administer lead dust tests, which the bill requires prior to the settlement of a contract for the sale of property. To the extent that failed dust tests result in a decrease in the number of successful settlements, small businesses associated with the residential real estate market may be negatively impacted.

Additional Information

Prior Introductions: None.

Cross File: HB 644 (Delegates Oaks and Niemann) - Environmental Matters.

Information Source(s): Baltimore, Carroll, Cecil, Montgomery, and St. Mary's counties; State Department of Assessments and Taxation; Maryland Department of the Environment; Department of Housing and Community Development; Department of Health and Mental Hygiene; Comptroller's Office; Maryland Association of County Health Officers; Maryland Association of Counties; U.S. Centers for Disease Control and Prevention; Department of Legislative Services

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Analysis by: Evan M. Isaacson

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