

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1067

(Delegate Rosenberg, *et al.*)

Environmental Matters

Environment - Reduction of Lead Risk in Housing - Blood Lead Level

This bill lowers the elevated blood lead level (from 10 to 5 micrograms per deciliter) at which, upon receipt of specified notice that a person at risk has an elevated blood level (1) an owner of an affected property is required to satisfy the modified risk reduction standard and (2) a local health department is required to notify the person at risk and the owner of the affected property.

The bill takes effect October 1, 2013, but applies to blood lead levels documented on or after February 24, 2014.

Fiscal Summary

State Effect: General/special fund expenditures increase by a minimum of approximately \$229,000 in FY 2014 to hire and equip four additional personnel to handle the significantly greater caseloads for persons at risk with elevated blood lead levels under the bill's lower threshold. General/special fund expenditures may be significantly higher beginning in FY 2015, as discussed below. Revenues are not directly affected.

Local Effect: Expenditures may increase significantly for locally owned housing entities to comply with the modified risk reduction standard due to the bill's lower threshold for elevated blood levels. In addition, local health department expenditures increase to provide the required notice to persons at risk and support additional caseloads. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful increase in costs, due to the bill's lower threshold for elevated blood lead levels, for certain small business rental property owners to comply with the modified risk reduction standard.

Analysis

Current Law/Background:

Lead Poisoning in Children

According to the federal Centers for Disease Control and Prevention (CDC), adverse health effects exist in children at blood levels less than 10 micrograms per deciliter, and 5 micrograms per deciliter is the reference level at which public health actions be initiated. However, no treatments are known to lower the blood lead levels for children with lead levels less than 10 micrograms per deciliter, and measuring blood levels below that level is difficult. Therefore, although CDC warns there are no safe blood lead levels, the 10 micrograms per deciliter threshold has long been 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 121,524 children age six who were tested for lead in 2011, 452 (0.4%) 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 nineteenth straight year in which the rate has dropped in Maryland.

Reduction of Lead Risk in Housing Law

According to the Maryland Department of the Environment (MDE), lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland. Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. Chapter 114 established 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. Among other things, MDE provides blood lead surveillance through a registry of test results of all children tested in Maryland. The program also oversees case management follow-up by local health departments for children with elevated blood lead levels and performs environmental investigations for lead poisoned children.

The 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 (discussed below), Chapter 610 of 2011 (HB 1033) 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.

Qualified Offer and Recent Court of Appeals Case

Previously, if a landlord complied with the program's regulatory provisions, Chapter 114 provided 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. However, in a decision filed October 24, 2011, 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 may be impacted by the court's decision, as they no longer have the liability protection previously afforded to them.

Recent Study and Changes to the Reduction of Lead Risk in Housing Law

In addition to altering the modified risk reduction standard, 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 residential properties not currently regulated by MDE, 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, including, among other things, expanding the scope of regulation to include rental properties built before 1978 and owner-occupied properties; increasing the program's property registration fee to address the program's declining revenue sources; and evaluating whether to require MDE to seek delegation of the federal renovation, repair, and repainting rule, which requires renovation companies to be registered and follow lead safe work practices while doing renovation in pre-1978 constructed homes.

Chapter 387 of 2012 (HB 644) makes various changes to the Reduction of Lead Risk in Housing Law to address the recent Court of Appeals decision and some of the issues examined by the study group. Changes under Chapter 387 include (1) expanding the application of the law to owners of residential rental property built between 1950 and 1978 beginning January 1, 2015; (2) increasing the annual registration fee from \$15 to \$30; (3) altering the definition of "abatement" to include renovation, repair, and painting in specified properties built before 1978; (4) authorizing MDE to adopt regulations related to abatements involving renovation, repair, and painting; (5) repealing a rebuttable presumption that an owner of property that is not in compliance with the lead law is presumed to have failed to exercise reasonable care; (6) providing that evidence that a property owner was or was not in compliance with the lead law is admissible to prove that the owner exercised or failed to exercise reasonable care; and (7) requiring a party who makes certain allegations or denials without a good faith basis to pay reasonable costs, including attorney's fees, incurred by the adverse party in opposing the allegation or denial.

Lead Poisoning Prevention Fund and Enforcement

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.

State Expenditures: General/special fund expenditures are expected to increase by a minimum of approximately \$229,000 in fiscal 2014 to hire and equip one environmental compliance specialist, one assistant Attorney General, one administrative specialist, and one office secretary to handle the significantly greater caseloads for persons at risk with elevated blood lead levels under the bill's lower threshold. MDE advises that, in 2011, 2,740 children were identified as having blood lead levels between 5 and 10 micrograms per deciliter. Thus, four additional full-time employees represent the minimum staffing level necessary to implement the bill in fiscal 2014.

As discussed above, current law expands the application of the Reduction in Lead Risk Housing Law (to owners of residential rental property built between 1950 and 1978) beginning in fiscal 2015. This expansion, together with the lower blood level threshold established by the bill, is expected to significantly increase the population of individuals affected by the law. Although the extent of this expansion cannot be reliably estimated at this time, the Department of Legislative Services advises that general/special fund expenditures could be twice as high in future years than in fiscal 2014.

It is assumed that MDE uses special funds to implement the bill to the extent that such funds are available. Because special funds are not likely to be sufficient to cover costs, it is expected that general funds are also needed.

MDE advises that, although the case management responsibilities of local health departments increase under the bill, the department does not expect to increase the amount of grant funds it distributes to the counties (due to a lack of funds).

The Department of Health and Mental Hygiene advises that it can use existing budgeted resources to provide any necessary technical assistance and coordination to local health departments.

The Department of Housing and Community Development (DHCD) administers the Lead Hazard Reduction Grant and Loan Program to assist homeowners and landlords lessen the risk of lead poisoning and preserve the housing stock by reducing or eliminating lead-based paint hazards. According to DHCD, any increase in the number of individuals eligible for grant funding under the bill is likely to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Maryland Department of the Environment, Department of Housing and Community Development, Department of Health and Mental Hygiene, Department of Legislative Services

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