

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1299 (Delegate McMillan, *et al.*)
Environmental Matters

Lead Poisoning - Risk Reduction Standard - Frequency of Testing

This bill requires the owner of an affected property with windows installed after 1978 to pass the test for lead-contaminated dust (1) every five years; (2) before a child or pregnant woman occupies the affected property; and (3) on notification that an individual occupying the affected property is pregnant.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, as discussed below.

Local Effect: Potential minimal decrease in expenditures for locally owned housing entities if the bill results in less frequent testing.

Small Business Effect: Potential minimal decrease in costs for small business owners of affected property if the bill results in less frequent testing. Potential minimal decrease in revenues for small businesses that conduct lead dust inspections.

Analysis

Current Law/Background:

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.

To satisfy the risk reduction standard, an owner of an affected property (regardless of when windows were installed in the property) must – before a tenant occupies the property and at each change in occupancy – pass a test for lead-contaminated dust.

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

Chapter 610 of 2011 (HB 1033) 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, among other things, address 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.

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.

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

Chapter 387 of 2012 did not require MDE to seek delegation from EPA or to implement a program consistent with the RRP rule, the new law authorizes MDE to adopt regulations governing standards and procedures for abatement involving the renovation, repair, and painting of lead-containing substances, including a requirement for lead-dust testing.

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. However, no treatments are known to lower the blood level for children with lead levels less than 10 micrograms per deciliter, and 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 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.

State Fiscal Effect: Under current law, an affected property is required to pass a lead-contaminated dust test before a tenant occupies the property and at each subsequent change in occupancy. MDE advises that, on average, changes in occupancy at affected properties occur once every three years. Because the bill requires certain affected properties to be tested every *five* years, the bill may result in fewer tests conducted; however, any decrease in tests conducted is offset, in part, by an increase in tests conducted due to the bill's requirement that a property be tested upon the owner's notification that an occupant is pregnant. Regardless, such tests are conducted by private inspectors – not by MDE. Because the bill is not expected to materially affect the number of inspectors seeking accreditation from MDE, the bill is not expected to materially affect State finances or operations.

Additional Comments: It is assumed that the bill applies to an affected property with *any* windows installed after 1978, since the bill does not indicate that it applies only to properties that have had *all* windows replaced after that time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; cities of Baltimore and Bowie; Maryland Department of the Environment; Department of Legislative Services

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