

Department of Legislative Services  
 Maryland General Assembly  
 2014 Session

FISCAL AND POLICY NOTE

House Bill 431 (Delegate Hogan, *et al.*)  
 Ways and Means and Environmental  
 Matters

**Income Tax Subtraction Modification - Lead Hazard Reduction Projects**

This bill creates a subtraction modification against the State income tax for the costs incurred for qualifying lead hazard reduction projects. The Department of Housing and Community Development (DHCD) is required to administer the program and, in cooperation with the Maryland Department of the Environment (MDE) and the Comptroller’s Office, adopt regulations to implement the program. DHCD may not approve a project after June 30, 2017.

The bill takes effect July 1, 2014, and applies beginning with tax year 2014.

**Fiscal Summary**

**State Effect:** General fund revenues decrease by \$200,000 in FY 2015 due to subtraction modifications claimed against the income tax. General fund expenditures increase by \$208,900 in FY 2015 due to implementation costs at DHCD and the Comptroller’s Office. Future year estimates reflect ongoing DHCD administrative costs and termination of the program.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	(\$200,000)	(\$200,000)	(\$200,000)	(\$100,000)	\$0
GF Expenditure	\$208,900	\$156,600	\$163,900	\$85,800	\$0
Net Effect	(\$408,900)	(\$356,600)	(\$363,900)	(\$185,800)	\$0

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

**Local Effect:** Local income tax revenues decrease by \$130,500 in FY 2015 and by \$62,300 in FY 2018. Local expenditures are not affected. The bill’s criminal penalty provision is not expected to significantly affect local finances.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** The bill establishes an income tax subtraction modification for qualifying property owners who complete an approved lead hazard reduction project. Owners of registered rental property, child care centers, day care centers for the elderly, and owner-occupied housing that meet specified requirements are eligible for the subtraction modification. In order to qualify, both registered rental property and owner-occupied property must contain lead-based paint, have at least two bedrooms, and be constructed before 1978. A taxpayer may submit to DHCD a proposal for a lead hazard reduction project; this proposal must be submitted in writing before commencement of the project. DHCD must approve or disapprove the project within 60 days after receiving a completed application and may not approve a project after June 30, 2017.

In order to qualify, all lead hazard reduction activities must be performed in accordance with MDE standards and procedures. Subtraction modifications are not allowable for costs for which the taxpayer has already received a State lead hazard reduction loan or grant.

The amount of the subtraction modification is equal to:

- 90% of direct costs of an approved lead hazard reduction project for rental property;
- 70% for child care and elder care centers; and
- 90% for owner-occupied property.

The total subtraction modification cannot exceed \$5,000 per unit/project or \$50,000 total for any taxpayer.

In order to qualify for the subtraction modification, properties must at completion of the project:

- satisfy the “full risk reduction” standard;
- have a walk-off floor mat for all exterior entryways;
- not have any exterior surfaces with chipping, peeling, or flaking paint;
- have lead-safe windows in all specified living areas; and
- pass a lead-contaminated dust test.

Once the project has been completed, an independent inspector accredited by MDE and hired by the owner of the property will issue a certificate indicating that the property owner has met the eligibility requirements for the subtraction modification.

Any person who knowingly makes a false statement or report in applying for the subtraction modification is guilty of a misdemeanor and subject to a penalty provision (up to a \$50,000 fine and/or a maximum of two years imprisonment).

**Current Law:** No State income tax subtraction modification of this type exists. However, several State and federal programs provide funding for lead abatement.

### **Background:**

#### *Reduction of Lead Risk in Housing Law*

According to 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.

#### *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*

Unrelated to the Court of Appeals decision, 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 made various changes to the Reduction of Lead Risk in Housing Law to address the 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.

### *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. Recently, CDC decided to adopt the 5 micrograms per deciliter as the reference blood lead level and is no longer using the 10 micrograms per deciliter level or referring to a “level of concern.” The new reference level represents the blood lead levels of children (ages one through five) in the highest 2.5 percentiles for blood lead levels.

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 110,539 children younger than age six who were tested for lead in 2012, 364 (0.3%) 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 points were tracked, and is the twentieth straight year in which the rate has dropped in Maryland.

In 2012, according to MDE, 40% of new childhood lead poisoning cases in Maryland involved children identified as residing in rental properties built after 1949.

### *Massachusetts Lead Paint Removal Credit*

Massachusetts offers a similar tax credit for owners of residential property. Property owners who meet certain eligibility requirements and undertake approved lead reduction projects may claim a tax credit for up to \$1,500 per residential unit. Any unused amount of credit may be carried forward to seven tax years. In fiscal 2013, 1,850 tax returns claimed a total of \$2.5 million in credits.

**State Revenues:** Subtraction modifications may be claimed beginning in tax year 2014. DHCD may not approve a project after June 30, 2017. As a result, general fund revenues

will decrease by an estimated \$200,000 annually in fiscal 2015 through 2017. General fund revenues will decrease by \$100,000 in fiscal 2018, reflecting one-half of a taxable year impact.

This estimate is based on the amount of tax credits claimed in Massachusetts in fiscal 2013, adjusted for differences in the value and eligibility of the proposed credit and amount of pre-1950 housing in each state.

The criminal penalty provision is not expected to significantly affect State revenues.

**State Expenditures:** General fund expenditures increase by \$208,900 in fiscal 2015 due to implementation costs at DHCD and the Comptroller's Office, as described below.

DHCD advises that it would incur additional costs beginning in fiscal 2015 as a result of hiring one program administrator and one inspector. As a result, general fund expenditures increase by \$160,900 in fiscal 2015, which accounts for the bill's July 1, 2014 effective date. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

The Comptroller's Office reports that it will incur a one-time expenditure increase of \$48,000 in fiscal 2015 to add the subtraction modification to the personal income tax form. This amount includes data processing changes to the SMART income tax return processing and imaging systems and systems testing.

Positions	2
Salary and Fringe Benefits	\$151,007
Operating Expenses	9,900
<b>DHCD Expenditures</b>	<b>\$160,907</b>
<b>Comptroller Expenditures</b>	<b>\$48,000</b>
<b>Total FY 2015 Expenditures</b>	<b>\$208,907</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. It is assumed that DHCD will continue to administer the program for six months after June 30, 2017, the last day DHCD can approve an application.

#### *Penalty Provision*

The criminal penalty provision is not expected to significantly affect State expenditures.

**Local Revenues:** Local income tax revenues decrease by about 3% of the total net State subtraction modification claimed. Local revenues will decrease by \$130,500 annually in fiscal 2015 through 2017 and decrease by \$62,300 in fiscal 2018.

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### **Additional Information**

**Prior Introductions:** Similar legislation has been introduced proposing to create a State income tax credit for lead reduction projects. HB 389 of 2013, HB 554 of 2012, and HB 527 of 2011 received a hearing in the House Ways and Means Committee, but no further action was taken. HB 1449 of 2006 received a favorable with amendments report from the House Ways and Means Committee, passed the House, and received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. HB 1394 of 2005, HB 1039 of 2004, HB 995 of 2000, and HB 990 of 1997 all received unfavorable reports from the House Ways and Means Committee.

**Cross File:** None.

**Information Source(s):** U.S. Census Bureau, U.S. Centers for Disease Control and Prevention, Department of Housing and Community Development, Comptroller's Office, *Fiscal 2013 Massachusetts Tax Expenditure Report*, Department of Legislative Services

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